FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1936

No. 4 ORIGINAL

THE STATE OF TEXAS,
Complainant,

against

THE STATE OF FLORIDA, *ET AL.*,
Respondents.

MOTION FOR LEAVE TO FILE BILL OF COMPLAINT, and BILL OF COMPLAINT

WILLIAM McCRAW,
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MOTION FOR LEAVE TO FILE BILL OF COMPLAINT.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Now comes the State of Texas, and moves the Court for leave to file the appended bill of complaint against the State of Florida, the Commonwealth of Massachusetts, the State of New York, all sovereign States of the United States of America, and Mabel Harlow Green and Hetty Sylvia Ann Howland Wilks, citizens of another State than the Complainant; such appended bill presenting a controversy of a civil nature arising between these parties relative to conflicting claims of each concerning the domicile for tax purposes of the decedent Edward H. R. Green and the determination of the rights of the domiciliary State to assess

taxes, more particularly transfer, succession or inheritance taxes dependent upon the determination of the State of domicile of said decedent at the time of his death in June, 1936.

WILLIAM MCCRAW,
Attorney General of the State of Texas.

LLEWELLYN B. DUKE,
Assistant Attorney General,
Attorneys for the State of Texas.

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No. _____ ORIGINAL

THE STATE OF TEXAS,

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THE STATE OF FLORIDA, *ET AL.*,

Respondents.

BILL OF COMPLAINT.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The State of Texas, complainant, brings this bill against the State of Florida, the Commonwealth of Massachusetts, the State of New York, and Mabel Harlow Green, and Hetty Sylvia Ann Howland Green Wilks, both citizens of the United States of America and residents of the State of New York, respondents, and avers:

1. The complainant, the State of Texas, and each of the three respondents the State of Florida, the Commonwealth of Massachusetts and the State of New York are States of the United States of America. The respondents Mabel Harlow Green and Hetty Sylvia Ann Howland Green Wilks are citizens of the United States of America and of the State of New York, one of such States, and are residents and inhabitants of the Southern District of New York.

2. This is a case or controversy of a civil nature between two or more States of the United States of America, and between a State and citizens of another State, and, therefore, is within the original jurisdiction of this Court.

3. As a condition to succession, the State of Texas, since a date long prior to June, 1936, has imposed a transfer, succession or inheritance tax computed upon the money value of that to which each person may succeed. The transfer, succession or inheritance tax law is contained in Chapter 29, Acts of Second-called Session of 1923, as codified in Chapter 5, Articles 7119 to 7144, Revised Civil Statutes of 1925, as amended through H. B. 682, Laws of 1935. In addition, it has imposed a transfer, succession or inheritance tax computed in part on the money value of the whole of the property the succession to which is in the governing jurisdiction of the State of Texas and fixed at 80% of the taxes on the estate of the decedent as actually assessed and determined by the United States Government under its Revenue Act of 1926. This additional tax, which is known as an estate tax, is provided for in Chapter 192, Acts of 1933. In the case of a resident decedent, the primary transfer, succession or inheritance tax is assessed on all the decedent's intangible property wherever situate and upon all real estate and tangible personal property situated in the State of Texas. This tax, in the case of a non-resident, is only imposed on the tangible personal property and real estate situate in the State of Texas (Article 7117, Chapter 5, Revised Civil Statutes of 1925). The tax is computed on the actual market value at the time of decedent's death of the share passing to each beneficiary and the rates are graduated, an increased rate applying on the amount in each succeeding braket (Article 7118, Chapter 5, Revised Civil Statutes of 1925). The

amount of the tax so computed is a lien upon such property from the death of the decedent until paid (Articles 7131 and 7133, Chapter 5, Revised Civil Statutes of 1925). The additional estate tax is provided to absorb the difference, if any, between the amount of the State inheritance taxes and the 80% credit allowed under the Federal Estate Tax Act of 1926. Such taxes imposed by the laws of Texas constitute not only a condition to such succession, but also a lien on all the property of whatsoever nature and wheresoever situate to which succession is permitted. The imposed taxes constitute a substantial share of the public revenues upon which the State of Texas is dependent. The applicable provisions of the above-mentioned statutes are set out in Appendix A which for the information of the Court is appended hereto, and complainant asks this Court to consider the whole of such taxing statutes as amended, and the existence and effect thereof, as an averment of this bill as if here set forth in full.

4. Likewise, each the State of Florida, the Commonwealth of Massachusetts and the State of New York has promulgated and there has been in force in each, since a date long prior to June, 1936, a system of laws imposing a transfer, succession or inheritance tax upon the right of succession or inheritance. The United States of America since a date long prior to June, 1936 has also imposed an estate tax upon the estates of decedents.

5. The State of Florida, since a date long prior to June, 1936, as a condition to succession, has imposed a transfer, succession or inheritance tax computed upon the money value of that to which each person may succeed fixed at 80% of the taxes upon the estate of the decedent as actually assessed and determined by the United States Gov-

ernment under the Revenue Act of 1926. The estate tax law of Florida is contained in Chapter 16015, Laws of 1933. The tax is imposed on all real and personal property of resident decedents (except real and tangible personal property having an actual *situs* without the State) and on the real property and tangible personal property of non-residents situated within the State (Section 4, Chapter 16015, Laws of 1933). The Act provides that there shall be assessed as an estate tax an amount equal to the credit applicable under the Federal Estate Tax Laws (Section 3, Chapter 16015, Laws of 1933). The tax until paid is a lien for ten years upon the gross estate of the decedent (Section 15, Chapter 16015, Laws of 1933). The applicable provisions of the above-mentioned statutes are set out in Appendix B, which for the information of the Court is appended hereto, and complainant asks this Court to consider the whole of such taxing statute, the existence and effect thereof, as an averment of this bill as if here set forth in full.

6. The Commonwealth of Massachusetts, since a date long prior to June, 1936, has imposed a certain transfer, succession or inheritance tax computed upon the money value of that to which each person may succeed. The inheritance tax law is contained in Chapter 65, General Laws of 1932, as amended by Chapter 293 and Chapter 319, Laws of 1933. In addition, it has imposed a separate estate tax to absorb the difference, if any, between the total Massachusetts tax and the 80% credit allowed by the Federal Estate Tax Law. This additional tax law, which is known as an estate tax, is contained in Chapter 65A, General Laws of 1932, as amended by Chapter 284, Laws of 1932, and Chapter 316, Laws of 1933. In the case of a resident decedent, the primary inheritance tax is assessed on all the decedent's intangible property wherever situate, and upon all real estate and tangible

personal property situated in the Commonwealth of Massachusetts. This tax, in the case of a non-resident, is only imposed on the tangible personal property and real estate situate in the Commonwealth of Massachusetts (Section 1, Chapter 65A, General Laws of 1932, as amended by Chapter 284, Laws of 1932, and Chapter 316, Laws of 1933). The tax is computed on the actual market value at the time of decedent's death of the share passing to each beneficiary and the rates are graduated, an increased rate applying on the amount in each succeeding bracket (Section 1, Chapter 65A, General Laws of 1932, as amended by Chapter 284, Laws of 1932, and Chapter 316, Laws of 1933). The amount of the tax so computed is a lien upon such property from the death of decedent until paid (Section 9, Chapter 65A, General Laws of 1932, as amended by Chapter 284, Laws of 1932, and Chapter 316, Laws of 1933). The additional estate tax is provided to absorb the difference, if any, between the amount of the inheritance tax and the 80% credit allowed under the Federal Estate Tax Act (Section 1, Chapter 65A, General Laws of 1932, as amended by Chapter 284, Laws of 1932, and Chapter 316, Laws of 1933). The Commonwealth of Massachusetts has also imposed an emergency inheritance tax which was in effect at the date of decedent's death and is an additional flat sum equal to 10% of the principal inheritance tax. The applicable provisions of the above-mentioned statutes are set out in Appendix C, which for the information of the Court is appended hereto, and complainant asks this Court to consider the whole of such taxing statutes as amended, the existence and effect thereof, as an averment of this bill as if here set forth in full.

7. The State of New York, since a date long prior to June, 1936, has imposed a transfer, succession or inheritance tax computed upon the money value of the whole of the prop-

erty to which the right of succession applies. The inheritance tax law is contained in Article 10C, Chapter 710, Laws of 1930, as amended by Chapters 62, 134, 135, 136, 137 and 151, Laws of 1931; and Chapters 156, 320, 322, 323, 325, 326, 333, Laws of 1932; and Chapters 359, 459, 460, Laws of 1933; and Chapters 63, 434, 639, Laws of 1934; and by Chapters 39, 421, 499, Laws of 1935; and by Chapters 126, 576, 666, Laws of 1936. In addition, it has imposed a succession, transfer or inheritance tax computed in part on the money value of the whole of the property, the succession to which is in the governing jurisdiction of the State of New York, and computed in remaining part on 80% of the taxes on the estate of the decedent as actually assessed and determined by the United States of America under its Revenue Act of 1926. This additional tax law, which is known as an estate tax, is provided in Chapter 322, Laws of 1932. In the case of a resident decedent, the primary inheritance tax is assessed on all the decedent's intangible property wherever situate and upon all real estate and tangible personal property situated in the State of New York. This tax, in the case of a nonresident, is only imposed on the tangible personal property and real estate situate in the State of New York (Sections 249n, 249p, Article 10C, Chapter 710, Laws of 1930). The tax is computed on the actual market value of the net estate at the time of decedent's death and the rates are graduated, an increased rate applying on the amount in each succeeding bracket (Sections 249n, 249p, Article 10C, Chapter 322, Laws of 1930). The amount of the tax so computed is a lien upon such property from the death of the decedent until paid (Section 249bb, Article 10C, Chapter 710, Laws of 1930). The additional estate tax is provided to absorb the difference, if any, between the amount of the inheritance tax and the 80% credit allowed under the Federal Estate Tax Act (Chapter 322, Laws of 1932). The

applicable provisions of the above-mentioned statutes are set out in Appendix D, which for the information of the Court is appended hereto, and complainant asks this Court to consider the whole of such taxing statutes as amended, the existence and effect thereof, as an averment of this bill as if here set forth in full.

8. The United States of America, under and by virtue of its Revenue Laws in force in June, 1936, has imposed an estate tax computed upon the money value of the net estate of a decedent. The basic provisions of the Federal estate tax are to be found in Title III, Revenue Act of 1926, as amended by Revenue Acts of 1928, 1932, 1934 and 1935. The tax is imposed upon the transfer of the net estate of every decedent, whether a resident or a non-resident of the United States. Under the Act of 1926 the tax is computed on the actual market value of the net estate at the time of the decedent's death and the rates are graduated, an increased rate applying on the amount in each succeeding bracket. However, the tax imposed by this Act may be credited with the amount of any estate tax paid to the several States in an amount not to exceed 80% of the tax imposed by the Act (Section 301, Revenue Act of 1926). By the Act of 1932 a tax in addition to the tax under the Act of 1926 was imposed upon the transfer of the net estate of every decedent whether a resident or a non-resident of the United States. Under the Act of 1932 the tax is computed on the actual market value of the net estate at the time of the decedent's death and the rates are graduated, an increased rate applying on the amount in each succeeding bracket. On the basis of the rates of the 1932 act a tentative tax is first determined and from such tentative tax and the tax computed under the 1926 act the final federal tax is determined. The total amount of the tax so computed is a

lien upon all the decedent's property for a period of ten years from the death of decedent (Section 315, Revenue Act of 1926). The applicable provisions of the above-mentioned statutes are set out in Appendix E, which for the information of the Court is appended hereto, and complainant asks this Court to consider the whole of such taxing statutes as amended, the existence and effect thereof, as an averment of this bill as if here set forth in full.

9. The amount of the transfer, succession or inheritance tax due and owing the United States of America as specified in paragraph 8 above is imposed and assessed upon the estate of the decedent and is not affected by the determination of the particular State of domicile of the decedent. It is particularly averred that under the existing facts, in respect of the property of the decedent Edward H. R. Green as averred in this bill of complaint, any determination of the State of domicile for tax purposes would not affect in any way the amount of tax due the United States of America.

10. In the month of June, 1936, and on or about June 8, 1936, the decedent Edward H. R. Green, who then and there was domiciled within the State of Texas, in the City of Terrell in the County of Kaufman in said State, died in Essex County, New York, where he was temporarily sojouring. The said Edward H. R. Green was possessed at death of property of very great value, the extent, location, character and value of such property being alleged with more particularity and completeness in paragraphs 11-17 of this bill.

11. Upon information and belief, the decedent Edward H. R. Green at the time of his death was seized and pos-

sessed of the following real estate and personal tangible property:

In the State of Florida		
Real Estate	$ 53,000.00	
Personal tangible property	20,000.00	$ 73,000.00
In the State of Texas		
Real Estate		6,000.00
In the Commonwealth of Massachusetts		
Real Estate	$ 434,500.00	
Jewels, coins and household effects	3,000,000.00	3,434,500.00
In the State of New York		
Jewels, coins and stamps		3,000,000.00
		$6,513,500.00

Upon information and belief, the decedent Edward H. R. Green at the time of his death owned and possessed intangible property consisting of stocks, bonds and credits in the approximate total amount of $37,835,000. Of this amount, $46,800 was represented by deposit accounts in the First National Bank of Miami Beach, Miami, Florida, $28,500 in the First National Bank of New Bedford, Massachusetts, and $261,000 in The Chase National Bank of the City of New York. The paper evidences representing the balance of such property as is represented by paper evidences are within the State of New York and are not within the State of Texas, the Commonwealth of Massachusetts or the State of Florida. The total gross estate of the decedent was at the date of his death on June 8, 1936, approximately $44,348,500.

At least two million dollars will be required for debts and administration expenses which will leave a net estate of approximately $42,348,500.

The sources of information upon which the belief of the complainant in respect of the property and the values thereof alleged in this paragraph are: the financial agent of the decedent who was in his employ for more than twenty years prior to the decedent's death, The Chase National Bank of the City of New York in whose custody is a very great proportion of the securities belonging to the Estate, the assessment rolls of the real estate in the State of Texas, the Commonwealth of Massachusetts and the State of Florida, and statements of expert appraisers of jewels, coins and stamps.

The real estate and personal tangible property in the State of Florida was assessed at $53,000 and $20,000 respectively. The cost of said property was very largely in excess of these amounts. The real estate in the State of Texas was assessed at approximately $6,000. The real estate in the Commonwealth of Massachusetts was assessed at approximately $434,500. Upon the basis of the appraisals of experts of part of the jewels, coins, stamps and household effects in Massachusetts and the value of the balance thereof in Massachusetts as estimated, the total value of jewels, coins, stamps and household effects in that State is approximately $3,000,000. The cost of such property was very largely in excess of that amount. There has been no appraisal of the jewels, coins and stamps in the State of New York, but the purchase price of this property was very largely in excess of $3,000,000.

The intangible property has been valued at approximately $37,835,000. Practically all of such intangible property had a readily ascertainable market value as of the date of the decedent's death. The value of the small amount of

remaining intangible property which did not have a readily ascertainable market value as of the date of the decedent's death has been estimated by the financial agent of the decedent.

12. Under the Estate Tax Laws of the United States hereinabove referred to, the United States will collect a net Estate tax of approximately $20,800,000. The Federal Estate Tax return has not yet been filed. The calculation of the Federal tax is set forth in Appendix F which for the information of the Court is appended hereto and complainant asks this Court to consider such calculation as an averment of this bill as if here set forth in full.

13. Under the succession, transfer or inheritance tax laws of the State of Texas hereinabove referred to, the State of Texas is entitled to levy and collect a tax in the amount of approximately $5,326,000. The calculation of the tax under the laws of the State of Texas is set out in Appendix G, which, for the information of the Court, is appended hereto and complainant asks this Court to consider such calculation as an averment of this bill as if here set forth in full.

14. Under the transfer, succession or inheritance tax laws of the State of Florida hereinabove referred to, the State of Florida will levy and collect an inheritance tax in the amount of approximately $5,335,000. The calculation of the tax under the laws of the State of Florida is set out in Appendix H which, for the information of the Court, is appended hereto and complainant asks this Court to consider such calculation as an averment of this bill as if here set forth in full.

15. Under the transfer, succession or inheritance tax laws of the Commonwealth of Massachusetts hereinabove

referred to, the Commonwealth of Massachusetts will levy and collect a tax in the amount of approximately $5,809,000. The calculation of the tax under the laws of the Commonwealth of Massachusetts is set out in Appendix I which, for the information of the Court, is appended hereto and complainant asks this Court to consider such calculation as an averment of this bill as if here set forth in full.

16. Under the transfer, succession or inheritance tax laws of the State of New York hereinabove referred to, the State of New York will levy and collect a tax in the amount of approximately $7,132,000. The calculation of the tax under the laws of the State of New York is set out in Appendix J, which, for the information of the Court, is appended hereto and complainant asks this Court to consider such calculation as an averment of this bill as if here set forth in full.

17. In summary, the total amount of Estate and Inheritance taxes which the United States of America and the States of Florida and New York and the Commonwealth of Massachusetts will attempt to collect is approximately $39,090,000. The total net estate is approximately $42,348,500, and, therefore, after the collection of such taxes, the sum remaining in the amount of approximately $3,258,500 will not be sufficient to pay the taxes to which the State of Texas is entitled as aforesaid in the amount of approximately $5,326,000. The exact figures, of which the above statements in this paragraph are approximations, are summarized with more particularity in a summary of the foregoing calculations referred to in paragraphs 11-16 above (set out in detail as Appendices F, G, H, I and J to this bill of complaint), which summary is set out in Appendix K and which, for the information of the Court, is appended hereto, and complainant asks this Court to consider said

summary as an averment of this bill of complaint as if here set forth in full.

18. The question in which State a particular person actually was domiciled who died in June, 1936, and who is claimed by each the State of Texas, the State of Florida, the Commonwealth of Massachusetts and the State of New York to have been domiciled at death within its limits, is the issue presented here. Such a determination will decide which of the above named States is entitled, to the exclusion of all others, to assess and impose a transfer, succession or inheritance tax upon the right of succession to property subject to such a tax by the State of domicile and by no other State.

19. The respondent Hetty Sylvia Ann Howland Green Wilks claims to be, and upon information and belief the complainant avers that she is, a sister of the said Edward H. R. Green. The said respondent asserts the right and privilege of succession to the whole of the said tangible and intangible personal property owned by the said Green at death. The respondent Mabel Harlow Green claims to be, and, upon information and belief the complainant avers that she is, the widow of the said Edward H. R. Green. This said respondent also asserts the right and privilege of succession to the whole of the said tangible and intangible property owned by the said Green at death.

20. The complainant is not informed of any other person than the said Hetty Sylvia Ann Howland Green Wilks and the said Mabel Harlow Green who asserts, or who may assert, any right or privilege to succeed to any portion of said tangible and intangible personal property owned by the said Green at death, and complainant avers, on information and belief, that there is no person other than those persons

above named who may assert any right or privilege to succeed to the property of the decedent Green. On information and belief, the complainant avers that the said Green left surviving him no child, or descendant of any deceased child, no brother or descendant of any deceased brother, no other sister than the said Hetty Sylvia Anna Howland Green Wilks, no descendant of any deceased sister, and no father and no mother.

21. The said Edward H. R. Green was born abroad, a citizen of the United States of America, of American parents who were domiciled and resided in Bellows Falls, Vermont. In the year 1892, at the age of twenty-four, he entered into the State of Texas, in the City of Terrell in the County of Kaufman of said State, and began to reside and to make his home in the said State of Texas. He continued such residence and domicile within the said State continuously at all times thereafter until his death in June, 1936. Throughout the whole of this period on innumerable occasions the said Edward H. R. Green, through civic activities and by frequent declarations manifested a clear intention and an unquestioned determination to maintain and preserve at all times his domicile and residence within the State of Texas. Beginning in 1910 the unfortunate circumstances of his mother's failing health, together with the necessity of rendering assistance in the extensive financial activities of his said mother, the famous Hetty Green, required the absence of the decedent Green from Texas for longer and more frequent periods than had been his habit, custom and wont. The death of the said Hetty Green in 1916 and the manifold duties coincident with the administration of her estate, and the great trusts and responsibilities imposed upon him by his mother and his sister, the respondent Wilks, enlarged the activities of Edward H. R. Green and required of him the

devotion and expenditure of a large portion of his time in the State of New York and in the Commonwealth of Massachusetts. During another portion of this period his failing health found relief in the State of Florida and it became his custom to spend the more inclement months of each year in that State, but at no time during this period did he by declaration or act manifest any intention or purpose of abandoning his residence and domicile in the State of Texas for any of the States in which he temporarily sojourned. He intended to retain continuously the State of Texas as his domicile and regularly and repeatedly within each and every year until his death he declared and manifested such intention, and he meticulously avoided conduct or actions which under any statute or administrative rule of either the State of Texas or any other State might constitute him *prima facie* a resident or inhabitant or citizen of such other State or his domicile that of such other State.

22. In law and in fact the said Edward H. R. Green was domiciled at his death in the State of Texas. In law and in fact he was not domiciled at such time either in the State of Florida, the Commonwealth of Massachusetts, or the State of New York or in any State other than the State of Texas.

23. Notwithstanding the facts as aforesaid, each the State of Florida, the Commonwealth of Massachusetts, and the State of New York in good faith claims that the said Edward H. R. Green was domiciled at death within its territorial limits, and that the payment to such claimant State of a transfer, succession or inheritance tax is a condition of the right and privilege of succession of each the respondent Mabel Harlow Green and the respondent Hetty Sylvia Ann Howland Green Wilks to the tangible property located within

its jurisdiction and the intangible personal property wherever located, and that a lien exists on all of such property to secure the payment of such tax.

24. As evidenced by the facts averred in paragraphs 11 and 13 above as to the amount of property existent within the State of Texas and as to the amount of tax due the State of Texas, it is apparent that there is not sufficient property within the State of Texas with which to satisfy the asserted claim and the asserted lien of the State of Texas for inheritance tax or any substantial part thereof; in fact, the property located within the State of Texas is for all practical purposes negligible in amount and grossly inadequate to pay any tax now due and owing the said State of Texas, as more particularly shown by the facts averred in paragraphs 11 and 13 above.

25. As evidenced by the facts averred in paragraphs 11-17 above as to the amount of property owned by the estate of the decedent Green, and as to the amounts claimed to be now due by each the State of Florida, the Commonwealth of Massachusetts, the State of New York, and the State of Texas, it is apparent that there is not sufficient property in the estate of the decedent Green with which to satisfy all the asserted claims and the asserted liens of each the State of Florida, the Commonwealth of Massachusetts, the State of New York and the State of Texas for transfer, succession or inheritance taxes and the federal estate tax now due and owing to the United States of America, in their entirety. In the event that each the State of Florida, the Commonwealth of Massachusetts, the State of New York and the State of Texas is successful in obtaining a determination from some court other than this Court that the domicile of the decedent Green was in that State at the

time of his death, and is successful in prosecuting its claim for the imposition of its transfer, succession or inheritance taxes, then and in that event at least one of the above States would be unable to find sufficient property of the decedent Green out of which to satisfy its claim for transfer, succession or inheritance tax, and with particularity it is alleged that in event each the State of Florida, the Commonwealth of Massachusetts and the State of New York fully and completely satisfy their claim for transfer, succession or inheritance tax out of the estate of the decedent Edward H. R. Green, then it is apparent that there would not be left a sufficient amount in the estate of the decedent Edward H. R. Green out of which the State of Texas could satisfy its just and lawful lien for transfer, succession or inheritance taxes now lawfully due and owing to it.

26. Over nine months have elapsed since the death of the said Edward H. R. Green. Proceedings of one sort or another have been begun during this time in each the State of Texas, the State of Florida, the Commonwealth of Massachusetts, and the State of New York which may be briefly summarized as follows:

(a) On July 28, 1936, on her *ex parte* application alleging that Edward H. R. Green died intestate on June 8, 1936, and that at death and for many years previously he was domiciled in Kaufman County, Texas, the County Court of Kaufman County, Texas, in the cause entitled Estate of Edward H. R. Green, Deceased, No. 954, entered an order appointing Mabel Harlow Green temporary administratrix of his estate, and on notice posted and published, in accordance with the laws of Texas, that unless objection were made by August 10, 1936, the appointment of the said Mabel Harlow Green as administratrix would be made permanent, such Court, no objection having been filed, entered an order on August 10, 1936, making permanent

the said appointment of the said Mabel Harlow Green as administratrix. On oath and bond filed, letters of administration were issued to her on August 18, 1936. Notwithstanding such orders, the laws of Texas yet permit appearance and proof in such proceeding of a different domicile and of a last will and testament, if any.

(b) On or about August 1, 1936, the respondent Hetty Sylvia Ann Howland Green Wilks filed in the Surrogate's Court of Essex County, New York, a paper dated March 28, 1908, and alleged to be the last Will and Testament of Edward H. R. Green, and duly petitioned said Court that the same be probated and that she be confirmed as executrix thereof, and alleged as jurisdictional facts that the said Edward H. R. Green was a non-resident of New York, but died in Essex County, New York, leaving personal property situate in New York. On or about September 14, 1936 the said Mabel Harlow Green and the New York State Tax Commissioner entered their appearances in the said probate proceeding. For the purpose of conserving the property and evidences of property owned by the said Edward H. R. Green at death and situate in the State of New York, the Surrogate before whom such proceeding is pending entered an order, on October 9, 1936, appointing one Thomas W. MacDonald temporary administrator, with authority to take possession of such property and evidences of property and to conserve the same. Said probate proceeding relates solely to the administration of and right of succession to the property of the decedent Green, and the sole question in issue or which can be in issue under the law of New York in this proceeding is whether the said Hetty Sylvia Ann Howland Green Wilks or the said Mabel Harlow Green succeeds to the whole or any part of the property of the said decedent Green, and the right of the State of New York or any of the other of the above-named respondent States to a succession,

transfer or inheritance tax on the estate of the decedent Green is not involved in said proceeding. Many hearings have been held in said proceeding and approximately 900 pages of testimony have been taken.

(c) Thereafter the said Thomas W. MacDonald as temporary administrator as aforesaid filed a petition for the purpose of instituting a so-called estate tax proceeding which under the law of New York is a proceeding separate and distinct from the probate proceeding above referred to. Pursuant to this petition, the said Court entered an order in this separate estate tax proceeding dated January 4, 1937, permitting each the Commonwealth of Massachusetts and the States of Florida, Texas and Vermont to intervene and appear as a party in said estate tax proceeding and directing that the issue of the domicile of the decedent Green be heard and determined in that proceeding. The Tax Commission of the State of New York has appealed from the said order of that Court and its appeal is now pending in the Appellate Division, Third Judicial Department of the State of New York. After the entry of the above mentioned order the Commonwealth of Massachusetts duly entered its appearance but upon the application of the Tax Commissioner of the State of New York such appearance was stricken out.

(d) On August 31, 1936, Mabel Harlow Green commenced an action in the United States District Court for the Northern District of Texas at Dallas, Texas, against the respondent Hetty Sylvia Ann Howland Green Wilks docketed as No. 3672-928 in Equity in which she sought a determination of her rights, if any, in the property of the decedent Green and sought the determination of a claim by the respondent Wilks of the existence of a so-called ante-nuptial agreement which prevented the said Mabel Harlow Green from asserting any claim or interest in the property of the decedent Green.

(e) On or about October 21, 1936, upon application of the Commissioner of Corporations and Taxation of the Commonwealth of Massachusetts, one Thomas Witter Chrystie was appointed special administrator of the estate of said Edward H. R. Green in Massachusetts by the Probate Court of Bristol County, Massachusetts, and was vested with the authority to take possession of and to conserve the property and the evidences of property owned by the said Edward H. R. Green at death and situate within the Commonwealth of Massachusetts.

(f) On or about January 4, 1937, upon the application of Mabel Harlow Green, the said Mabel Harlow Green was by the County Judges' Court of Dade County, Florida, appointed ancillary administratrix of the estate of said Edward H. R. Green, deceased, located within the State of Florida.

27. Neither the State of Texas, the State of Florida, the Commonwealth of Massachusetts nor the State of New York is a party to the proceedings in Kaufman County, Texas, the nature of which is more fully set out above in subdivision (a) of paragraph 26. Neither the State of Texas, the State of Florida, nor the Commonwealth of Massachusetts is a party to the proceedings in the Surrogate's Court of Essex County, New York, the nature of which is more fully set out in subdivision (b) of paragraph 26 above. The State of New York is a party to the proceedings in the Surrogate's Court of Essex County, New York, as set out above in subdivision (c) of paragraph 26, but an appeal has been taken therefrom by the State Tax Commission of the State of New York and is now pending in the appellate court, all as more particularly specified in subdivision (c) of paragraph 26 above. Neither the State of Texas, the State of Florida, the Commonwealth of Massachusetts nor the State of New York are parties to

the proceeding in the United States District Court for the Northern District of Texas, which is more fully set out in subdivision (d) of paragraph 26 above. The Commonwealth of Massachusetts alone acting through its Commissioner of Corporations and Taxation is a party to the proceeding in the Probate Court of Bristol County, Massachusetts, which is fully set out in subdivision (e) of paragraph 26 above. Neither the State of Texas, the State of Florida, the Commonwealth of Massachusetts nor the State of New York is a party to the proceeding in Dade County, Florida, more fully set out in subdivision (f) of paragraph 26 above. The State of Texas avers that it will not appear in any of the proceedings now instituted and enumerated above in paragraph 26 and it avers upon information and belief that neither the State of Florida, the Commonwealth of Massachusetts nor the State of New York will appear in any of such proceedings (except where they have appeared or are now present as set out in paragraph 26 above) either now pending or yet to be instituted.

28. The complainant avers that it is the law of each the State of Texas, the State of Florida, the Commonwealth of Massachusetts and the State of New York and the law of the land that no judgment of any State or Federal court is or could be binding against any other State not a party to the proceedings in which such judgment was entered.

29. From the facts averred in paragraphs 1, 26-28 above, it is apparent that no judgment rendered in any State or Federal court in the State of Florida, the Commonwealth of Massachusetts, the State of New York or the State of Texas, can bind all the parties respondent and the party complainant to this proceeding and that, therefore, the only Court which has the requisite jurisdiction to entertain this

complaint against the said parties respondent and on behalf of the party complainant is this Honorable Court, the Supreme Court of the United States. Only this Court possesses jurisdiction, within the judicial system of the United States of America and of its several States, to declare and determine in such manner as to be decisive among the parties to this proceeding the question in which of such four claimant States—Texas, Florida, Massachusetts and New York—the said Edward H. R. Green was domiciled at death.

30. In none of such proceedings referred to in paragraph 26 above has any adjudication as to domicile been made, or any adjudication that any liability exists either to the State of Texas or the State of Florida or the Commonwealth of Massachusetts or the State of New York for transfer, succession or inheritance taxes, or any adjudication of the amount of such liability. The complainant avers that all of such questions are as yet unadjudicated by any court of the United States of America or of the several States thereof, and that in the due order of judicial procedure, the question of domicile must first be decided before any of such other questions as to tax liability to any of the claimant States may be determined, and that such question of domicile must be decided by a court having jurisdiction over all of the parties to this cause and in a proceeding to which all are parties.

31. The respondent States and all of them, each the State of Florida, the Commonwealth of Massachusetts and the State of New York, are claiming and asserting to be the State of domicile of the decedent Edward H. R. Green, and as such are claiming and asserting a present lien for transfer, succession or inheritance taxes in the amounts heretofore specified in paragraphs 14-16 above, upon the intangible

personal property of the decedent wherever located and upon the realty and tangible personal property of the decedent located within the territorial limits of such respective claimant States. The Commonwealth of Massachusetts is claiming and asserting its right as the domiciliary State of the decedent Green to enforce a lien for transfer, succession or inheritance taxes in the amount set out in paragraph 15 upon all the intangible personal property of the estate of Edward H. R. Green, decedent, wherever located, and upon the realty and tangible personal property of the decedent Green located within the territorial limits of the Commonwealth of Massachusetts and to that end, has had appointed a Conservator upon application of its Commissioner of Corporations and Taxation as stated in paragraph 26, subdivision (e) above, which Conservator has taken physical possession of all the tangible personal property and of all the real estate of the decedent Edward H. R. Green located within the said Commonwealth of Massachusetts, upon all of which the said Commonwealth of Massachusetts asserts its lien for transfer, succession or inheritance taxes. Likewise, the State of Florida is claiming and asserting its right as the domiciliary State of the decedent Green to enforce a lien for transfer, succession or inheritance taxes in the amounts set out in paragraph 14 upon all the intangible personal property of the estate of the decedent Green, wherever located, and upon the realty and tangible personal property of the decedent Green located within the territorial limits of the State of Florida and to that end, has taken and is taking all necessary steps to perfect its said asserted lien. Likewise, the State of New York is claiming and asserting its right as the domiciliary State of the decedent Green to enforce a lien for transfer, succession or inheritance taxes in the amounts set out in paragraph 16 upon all the intangible personal property of the estate of the decedent Green

wherever located and upon the realty and tangible personal property of the decedent Green located within the territorial limits of the State of New York and to that end, has taken and is taking all necessary steps to perfect its said asserted lien, and more particularly, has instituted said separate judicial proceeding, the so-called estate tax proceeding, as specified in paragraph 26 subdivision (c) above.

32. By reason of the facts hereinbefore particularly averred in paragraphs 11-17 and 24-28 above, the rights of complainant, the State of Texas, and its rightful and lawful lien for transfer, succession or inheritance taxes as averred above, are now in actual jeopardy and the complainant is suffering and sustaining and will further suffer and sustain actual injury and irreparable damage to its said rights and to its lawful and rightful lien for transfer, succession or inheritance taxes as aforesaid unless the relief prayed for in this bill of complaint is granted.

33. On information and belief, the complainant avers that unless this Court shall here and now take jurisdiction and determine the said question of domicile, complainant will be without means of enforcing its lawful and just right to and lien for a transfer, succession or inheritance tax upon the estate of the said decedent Green in the amount of approximately $5,326,000, and that the complainant and the sovereign people thereof will be deprived of their lawful, just and valuable right to and lien for this said sum of approximately $5,326,000; and that the relief prayed for in this bill of complaint represents the only relief available to the said complainant and the people thereof.

34. The complainant the State of Texas avers that this proceeding is brought solely seeking the protection of and insurance by this Honorable Court of its right to impose

and satisfy its exclusive lien as the State of domicile of the decedent Green upon the estate of the decedent Edward H. R. Green for transfer, succession or inheritance taxes, and that it has no interest whatsoever in the succession to the estate of the decedent Edward H. R. Green, and the State of Texas further solemnly avers that this proceeding is brought solely in its own behalf and upon the behalf of no other party.

35. By reason of all the aforesaid an actual controversy now exists between the complainant and the respondents.

36. In consideration whereof and forasmuch as the complainant is without adequate remedy save in this Court sitting as a Court of Equity, the complainant prays this Honorable Court to issue its writ of subpoena in due form directed to the State of Florida, the Commonwealth of Massachusetts, the State of New York, Hetty Sylvia Ann Howland Green Wilks and Mabel Harlow Green commanding them on a day certain to appear before this Honorable Court to answer all and singular the matters and things hereinbefore set forth and complained of; but answer to this bill of complaint need not be under oath, answer under oath of each of the respondents being hereby expressly waived.

37. And the complainant prays that this Court may determine, declare and adjudge whether, for purposes of taxation as aforesaid, the said Edward H. R. Green was domiciled at death in the State of Texas, or in the State of Florida, or in the Commonwealth of Massachusetts, or in the State of New York, and more particularly, may determine, declare and adjudge that the said Edward H. R. Green, for purposes of taxation as aforesaid, was domiciled at death within the State of Texas, and not within either the State of Florida, or the Commonwealth of Massachu-

setts, or the State of New York, and further may determine, declare and adjudge that the complainant, and the complainant alone, has exclusive right and jurisdiction to impose and collect succession, transfer or inheritance taxes upon the intangible personal property as aforesaid owned by the said Edward H. R. Green at death.

38. And the complainant further prays for all other, further, different, and additional relief, by injunction or otherwise, as this Honorable Court may deem expedient, and offers to do all such equity as this Honorable Court shall require.

WILLIAM MCCRAW,
Attorney General, State of Texas,
LLEWELLYN B. DUKE,
Assistant Attorney General,
Attorneys for Complainant.

}ss.:

WILLIAM MCCRAW, having been first duly sworn, upon his oath says:

I am Attorney General of the State of Texas, and as such have authority to file in its name and behalf, in the Supreme Court of the United States, the foregoing bill of complaint and motion for leave to file the same. I am familiar with the averments contained in such bill of complaint, and according to my information and belief, such averments are true in all respects.

Sworn to and subscribed by The Honorable William MCCRAW, before me, the undersigned authority, this 12th day of March, 1937.

APPENDIX A.

Pertinent Provisions of Vernon's Texas Statutes, 1936, Relating to Estate and Inheritance Taxes.

ART. 7117. PROPERTY SUBJECT.—All property within the jurisdiction of this State, real or personal, corporate or incorporate, and any interest therein, whether belonging to inhabitants of this State or to persons who are not inhabitants, regardless of whether property is located within or without this State, which shall pass absolutely or in trust by will or by the laws of descent or distribution of this or any other State, or by deed, grant, sale or gift made or intended to take effect in possession or enjoyment after the death of the grantor or donor, shall upon passing to or for the use of any person, corporation or association, be subject to a tax for the benefit of the State's general revenue fund in accordance with the following classifications; provided, however, that the tax imposed by this Article in respect to personal property of non-residents (other than tangible property having an actual situs in this State) shall not be payable: (1) if the grantor or donor at the time of his death was a resident of a State or territory of the United States or of a foreign country, which, at the time of his death, did not impose a transfer or inheritance tax of any character in respect of personal property of residents of this State (other than tangible personal property having an actual situs in said State); or, (2), if the laws of the State or territory or foreign country of the residence of the grantor or donor at the time of his death, contained a reciprocal provision under which nonresidents were exempted from transfer or inheritance taxes of every character in respect to personal property (other than tangible personal property having an actual situs therein) provided the State or territory or foreign country of residence of such nonresidents allowed a similar exemption to residents of the State or territory or foreign country of residence of such a grantor or donor. For the purpose of this Article the District of Columbia and possessions of the United States

shall be considered territories of the United States, and Provinces of the Dominion of Canada shall be considered foreign countries. Provided further that the provisions of this Act shall not apply to residents of those states which have no inheritance tax law. [Acts 2nd C. S. 1923, p. 63; Acts 1929, 41st Leg., 1st C. S., p. 109, ch. 50, § 1.]

ART. 7120. CLASS C—BROTHER OR SISTER.—If passing to or for for[1] the use of a brother or sister or a direct lineal descendant of a brother or sister, of the decedent, the tax shall be three per cent on any value in excess of ten thousand dollars and not exceeding twenty-five thousand dollars; four per cent on any value in excess of twenty-five thousand dollars and not exceeding fifty thousand dollars; five per cent on any value in excess of fifty thousand dollars and not exceeding one hundred thousand dollars; six per cent on any value in excess of one hundred thousand dollars and not exceeding two hundred and fifty thousand dollars; seven per cent on any value in excess of two hundred and fifty thousand dollars and not exceeding five hundred thousand dollars; eight per cent on any value in excess of five hundred thousand dollars and not exceeding seven hundred and fifty thousand dollars; nine per cent on any value in excess of seven hundred and fifty thousand dollars and not exceeding one million dollars; and ten per cent on any value in excess of one million dollars. [Acts 2nd C. S., 1923, p. 63.]

ART. 7133. LIEN.—A lien shall exist on all property subject to taxation under this law to secure the payment of all taxes, penalties and costs provided for in this chapter. All persons acquiring any portion of said property shall be charged with notice of the existence of all such unpaid taxes, penalties and costs, and of the lien securing their payment, which may be enforced in any suit brought for the collection of said taxes, penalties and costs. [Id.]

ART. 7144a. IMPOSITION OF ADDITIONAL INHERITANCE TAX. —Sec. 1. In addition to the inheritance tax already levied

[1]So in enrolled bill. The second "for" should probably be omitted.

by this State under existing laws, an inheritance and transfer tax is hereby levied upon the net estate of every decedent dying after this Act shall take effect, and whose estate, or any portion thereof, is, or hereafter shall be, made taxable under the inheritance tax laws of this State, or that may be subject to such taxes under any law of this State that may be hereafter enacted. Said tax shall be, and is, levied upon the entire net value of the taxable estate of the decedent situated and taxable in the State of Texas, and the tax on each such estate shall be equal to the difference between the sum of such taxes due this State as inheritance or transfer taxes and eighty (80) per cent of the total sum of the estate and transfer taxes imposed on such estate by the United States Government under the Revenue Act of 1926, by reason of the property of such estate which is situated in this State and taxable under the laws of this State.

ADDITIONAL TAX AS LIEN ON ENTIRE ESTATE.

Sec. 2. The additional tax aforesaid shall be a lien upon the entire estate of the deceased and collectable out of said entire estate, or any part thereof, regardless of exemptions and deductions; and, in event two (2) or more persons succeed to or become the owners of taxable interests in such estate, and in event inheritance or transfer taxes are assessed under the law against portions thereof or interest therein severally, then said additional tax levied and collected under this Act shall be apportioned between or among such part owners in proportion to the amount of the tax assessed against each share or interest in said estate.

WHEN ADDITIONAL TAX NOT IMPOSED.

Sec. 3. In the event the amount of inheritance and transfer taxes assessed against any certain estate under the inheritance tax laws of this State shall equal or exceed eighty (80) per cent of the estate or transfer taxes assessed and computed by the United States under the Revenue Act of 1926, against said estate or property belonging thereto and situated within the State of Texas, then no additional

taxes shall be collected hereunder, it being the purpose and intention of this Act to collect only a sufficient additional tax, when necessary, for the State to get the full benefit of the eighty (80) per cent credit to the States provided for by Section 301, Chapter 27 of the Federal Revenue Act of 1926.[1]

IMPOSITION OF TAX SUFFICIENT TO EQUAL EIGHTY PER CENT OF FEDERAL TAX.

Sec. 4. Where no inheritance tax is imposed on an estate, which is situated in this State, under the laws of this State, by reason of its value not exceeding in value the amount of exemptions, and an estate tax is imposed on such estate by the Federal Government, then there shall be, and is hereby, levied, and shall be collected from such estate, as inheritance or transfer tax sufficient in amount to equal eighty (80%) per cent of said tax imposed by the Federal Government under the Revenue Act of 1926, on that portion of said estate which is situated in the State of Texas. In computing and determining the rate of the tax in such cases named in this Section, the State Comptroller, or other officers, whose duty it is to calculate and determine the amount of inheritance taxes, shall compute the same upon the net valuations of said estate as determined and used by the United States in computing the amount of the Federal Government tax due upon said estate, and said tax shall be paid from the whole of such estate before partition and distribution among the joint or several owners of same, and the said tax shall be due and payable, and shall be subject to the same interest and penalties for non-payment, as are other inheritance taxes under the provisions of the inheritance tax laws of the State. [Acts 1933, 43rd Leg., p. 581, Chapter 192, Section 2-b.]

[1]26 U. S. C. A. §§ 410, 413, 460.

APPENDIX B.

Pertinent Provisions of the Estate Tax Law of Florida.

1342(81) *Definition of terms used in law.*—When used in this law:

* * * * *

(d) The word "transfer" shall be taken to include the passing of property or any interest therein, in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift, or appointment in the manner herein described;

* * * * *

(f) The word "resident" means a natural person domiciled in the State of Florida;

* * * * *

(j) The term "tangible personal property" means corporeal personal property, including money; and the term "intangible personal property" means incorporeal personal property including deposits in banks, negotiable instruments, mortgages, debts, receivables, shares of stock, bonds, notes, credits, evidences of an interest in property, evidences of debt and choses in action generally. (Chap. 16015, Acts 1933, § 2.)

1342(82) *Effective date of law.*—This law shall take effect at 12:01 o'clock A. M. Eastern standard time, October 1st, A. D. 1933, and shall apply to the estates of decedents dying thereafter; and the estates of decedents dying prior thereto shall be taxed in accordance with the statutes and laws of Florida in force prior to the effective date of this law. (Id. § 33.)

1342(83) *Imposition of tax on estates of resident decedents.*—A tax is hereby imposed upon the transfer of the estate of every person dying after the effective date of this law who at the time of death was a resident of this State, the amount of which shall be a sum equal to the amount by

which the credit allowable under the applicable Federal revenue Act for estate, inheritance, legacy and succession taxes actually paid to the several States shall exceed the aggregate amount of all constitutionally valid estate, inheritance, legacy and succession taxes actually paid to the several States of the United States (other than the State of Florida) in respect to any property owned by such decedent or subject to such taxes as a part of or in connection with his estate. (Id. § 3.)

1342(84) *Imposition of tax on estates of nonresident decedents.*—A tax is hereby imposed upon the transfer of real property situate and tangible personal property having an actual situs in this State of every person who at the time of death was not a resident of this State but was a resident of the United States, the amount of which shall be a sum equal to such proportion of the amount of the credit allowable under the applicable Federal revenue Act for estate, inheritance, legacy and succession taxes actually paid to the several States, as the value of the property taxable in this State bears to the value of the entire gross estate wherever situate. (Id. § 4.)

1342(94) *Tax payable from entire estate.*—If the tax or any part thereof is paid or collected out of that part of the estate passing to or in possession of any person other than the executor in his capacity as such, such person shall be entitled to a reimbursement out of any part of the estate still undistributed or by a just and equitable contribution by the person whose interest in the estate of the decedent would have been reduced if the tax had been paid before the distribution of the estate or whose interest in the estate is subject to an equal or prior liability for the payment of tax, debts, or other charges against the estate, it being the purpose and intent of this section that so far as is practicable and unless otherwise directed by the will of the decedent, the tax shall be paid out of the estate before its distribution; but the commissioner shall not be charged with enforcing contribution from any person or persons. (Id. § 14.)

1342(95) *Lien of tax.*—Unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien. If the commissioner is satisfied that no tax liability exists or that the tax liability of an estate has been fully discharged or provided for, he may issue a waiver releasing any or all property of such estate from the lien herein imposed. There shall be paid to the commissioner a fee of one dollar for each waiver so issued. (Id. § 15.)

1342(105) *Prima facie liability for tax.*—The estate of each decedent whose property shall be subject to the laws of the State of Florida, shall be deemed prima facie liable for estate taxes under this law, and shall be subject to a lien therefor in such amount as may be later determined to be due and payable on such estate as provided in this law. Such presumption of liability shall begin on the date of the death of the decedent and shall continue until the full settlement of all taxes which may be found to be due under this law, such settlement to be shown by receipts for all taxes due to be issued by the commissioner as provided for in this law. * * * (Id. § 25.)

(The above provisions may be found in the Permanent Cumulative Supplement to the Compiled General Laws of Florida (1936) First Division—Title VI, Chapter V(A), Sections 134280-1342111 inclusive.)

APPENDIX C.

Pertinent Provisions of the General Laws of Massachusetts Relating to Inheritance and Estate Taxation.

Chapter 65.

Taxation of Legacies and Successions.

§ 1. *Taxation of Legacies and Successions; Rates of Tax; Exemptions.*—All property within the jurisdiction of the commonwealth, corporeal or incorporeal, and any interest therein, belonging to inhabitants of the commonwealth, and all real estate or any interest therein and all tangible personal property within the commonwealth belonging to persons who are not inhabitants of the commonwealth except such an interest in such real estate as is represented by a mortgage or by a transferable certificate of participation or share of an association, partnership or trust, which shall pass by will, or by laws regulating intestate succession, or by deed, grant or gift, except in cases of a bona fide purchase for full consideration in money or money's worth, made in contemplation of the death of the grantor or donor or made or intended to take effect in possession or enjoyment after his death, and any beneficial interest therein which shall arise or accrue by survivorship in any form of joint ownership in which the decedent joint owner contributed during his life any part of the property held in such joint ownership or of the purchase price thereof, to any person, absolutely or in trust, except to or for the use of charitable, educational or religious societies or institutions, the property of which is by the laws of the commonwealth exempt from taxation, or for or upon trust for any charitable purposes to be carried out within the commonwealth, or to or for the use of the commonwealth or any town therein for public purposes, shall be subject to a tax at the percentage rates fixed by the following table:

Relationship of Beneficiary to Deceased.	Rate Per Centum of Tax on Value of Property or Interest.							
	On Value not over $10,000.	On Excess above $10,000, not over $25,000.	On Excess above $25,000, not over $50,000.	On Excess above $50,000, not over $250,000.	On Excess above $250,000, not over $500,000.	On Excess above $500,000, not over $750,000.	On Excess above $750,000, not over $1,000,000.	On Excess above $1,000,000.
• • • • •								
Class A. **Husband, wife, father, mother; child, adopted child, adoptive parent, grandchild,**	1%	1%	2%	4%	5%	6%	7%	8%
• • • • •								

(1891, 425, § 1; 1895, 307; 1896, 108; 1901, 297; R. L. 15, § 1; 1905, 470, § 1; 1906, 436, § 1; 1907, 563, §§ 1, 3; 1909, 268, § 1; 490, IV, §§ 1, 3; 527, § 1; 1911, 502; 1912, 678, §§ 1, 2; 1916, 268, §§ 1, 3; 1920, 396, § 1; 548, § 1; 1922, 347; 403, § 1, 1924, 128; 1925, 338, § 1; 1926, 148, §§ 1, 2; 1927, 156, § 1; 929, 292, § 1; 1933, 293.)

§ 9. *Lien for Tax; Property Exempt; Discharge.*—Property of which a decedent dies seized or possessed, subject to taxes as aforesaid, in whatever form of investment it may happen to be, and all property acquired in substitution therefor, shall be charged with a lien for all taxes and interest thereon which are or may become due on such property; but said lien shall not attach to any personal property after the same has been sold or disposed of for value by the executors, administrators or trustees, or to real estate after it has been conveyed by the executors, administrators or trustees under license or decree of the probate court, or to real estate which, during the life of the grantor, is conveyed by recorded or registered deed and transferred in possession and enjoyment by him to the grantee, in contemplation of death. • • •

(1891, 425, § 4; 1895, 430, § 1; R. L. 15, § 4; 1902, 473, § 1; 1903, 248; 276, § 1; 1907, 563, § 4; 1909, 490, IV, § 4; 527, § 2; 1915, 152; 1916, 268, § 2; 1920, 548, § 2.)

CHAPTER 65A

Taxation of Transfers of Certain Estates.

§ 1. *Transfers of Certain Estates, Taxation of.*—A tax is hereby imposed upon the transfer of the estate of every person dying after February twenty-sixth, nineteen hundred and twenty-six, who at the time of death was a resident of this commonwealth, the amount of which shall be the amount by which eighty per cent of the estate tax payable to the United States under the provisions of the federal revenue act of nineteen hundred and twenty-six shall exceed the aggregate amount of all estate, inheritance, legacy and succession taxes actually paid to the several states of the United States in respect to any property owned by such decedent or subject to such taxes as a part of or in connection with his estate.

A tax is hereby imposed upon the transfer of real property or intangible personal property in the commonwealth of every person who at the time of death was a resident of the United States but not a resident of the commonwealth, and upon the transfer of all property, both real and personal, within the commonwealth of every person who at the time of death was not a resident of the United States, the amount of which shall be a sum equal to such proportion of the amount by which the credit allowable under the applicable federal revenue act for estate, inheritance, legacy and succession taxes actually paid to the several states exceeds the amount actually so paid for such taxes, exclusive of estate taxes based upon the difference between such credit and other estate taxes and inheritance, legacy and succession taxes, as the value of the property in the commonwealth bears to the value of the entire estate, subject to estate tax under the applicable federal revenue act. (1927, 178, §1; 1932, 284; 1933, 316, § 1.)

§ 6. *Federal Revenue Act, Change in, Effect.*—If the amount of tax imposed by Title III of said revenue act shall be increased or decreased as affecting an estate taxable here-

under subsequent to the payment of the tax on account of such estate imposed by section one of this chapter the tax imposed upon such estate hereunder shall be changed accordingly. * * * (1927, 178, § 1.)

§ 4. *Repayment, Collection, etc., Certain Laws Applicable to.*—The provisions of section twenty-seven of chapter fifty-eight relative to the repayment of illegal taxes and all provisions of said chapter sixty-five relative to the determination, certification and collection of the tax imposed by said chapter, relative to the refund or recovery of taxes assessed and collected without authority of law and relative to the determination of questions concerning the tax and all necessary administrative provisions of said chapter sixty-five shall also be effective in reference to all corresponding matters arising in connection with the tax hereunder, except that no lien shall attach to any property of any estate on account of the tax imposed hereunder. * * * (1927, 178, § 1.)

Chapter 397, Laws of 1936, approved June 24, 1936.

* * * * *

Section 2. All property subject to a legacy and succession tax under the provisions of chapter sixty-five of the General Laws, as appearing in the Tercentenary Edition, and of any further amendments thereof or additions thereto, shall be subject to an additional tax of ten per cent of all taxes imposed by said provisions. All provisions of law relative to the determination, certification, payment, collection and abatement of such legacy and succession taxes shall apply to the additional tax imposed by this section.

* * * * *

Section 5. * * * Section two shall apply only to property or interests therein passing or accruing upon the death of persons who die in the calendar year nineteen hundred and thirty-six.

APPENDIX D.

Pertinent Provisions of Article 10-C of the Tax Law of New York, Imposing a Tax on the Estates of Decedents.

§ 249-n. *Tax on estates of resident decedents.*

* * * * *

[Temporary Schedule of Taxes Applicable Between April 22, 1933 and July 1, 1937.]

Notwithstanding any of the foregoing provisions of this section and in lieu of the tax hereinbefore provided, there shall be and is hereby imposed upon the transfer of the net estate of every person dying on or after the date on which this paragraph becomes effective and prior to the first day of July, nineteen hundred thirty-seven, who at the time of death was a resident of this state, a tax equal to the sum of the following percentages of the value of the net estate, but net estates which, after deducting the applicable exemptions under section two hundred forty-nine-q of this article, do not exceed two thousand dollars shall not be taxable:

One per centum of the amount of the net estate not in excess of one hundred fifty thousand dollars, except so much thereof as may be exempted from tax under the provisions of section two hundred forty-nine-q hereof;

Two per centum of the amount by which the net estate exceeds one hundred fifty thousand dollars and does not exceed two hundred thousand dollars;

Three per centum of the amount by which the net estate exceeds two hundred thousand dollars and does not exceed three hundred thousand dollars;

Four per centum of the amount by which the net estate exceeds three hundred thousand dollars and does not exceed five hundred thousand dollars;

Five per centum of the amount by which the net estate exceeds five hundred thousand dollars and does not exceed seven hundred thousand dollars;

Six per centum of the amount by which the net estate exceeds seven hundred thousand dollars and does not exceed nine hundred thousand dollars;

Seven per centum of the amount by which the net estate exceeds nine hundred thousand dollars and does not exceed one million one hundred thousand dollars;

Eight per centum of the amount by which the net estate exceeds one million one hundred thousand dollars and does not exceed one million six hundred thousand dollars;

Nine per centum of the amount by which the net estate exceeds one million six hundred thousand dollars and does not exceed two million one hundred thousand dollars;

Ten per centum of the amount by which the net estate exceeds two million one hundred thousand dollars and does not exceed two million six hundred thousand dollars;

Eleven per centum of the amount by which the net estate exceeds two million six hundred thousand dollars and does not exceed three million one hundred thousand dollars;

Twelve per centum of the amount by which the net estate exceeds three million one hundred thousand dollars and does not exceed three million six hundred thousand dollars;

Thirteen per centum of the amount by which the net estate exceeds three million six hundred thousand dollars and does not exceed four million one hundred thousand dollars;

Fourteen per centum of the amount by which the net estate exceeds four million one hundred thousand dollars and does not exceed five million one hundred thousand dollars;

Fifteen per centum of the amount by which the net estate exceeds five million one hundred thousand dollars and does not exceed six million one hundred thousand dollars;

Sixteen per centum of the amount by which the net estate exceeds six million one hundred thousand dollars and does not exceed seven million one hundred thousand dollars;

Seventeen per centum of the amount by which the net estate exceeds seven million one hundred thousand dollars and does not exceed eight million one hundred thousand dollars;

Eighteen per centum of the amount by which the net estate exceeds eight million one hundred thousand dollars and does not exceed nine million one hundred thousand dollars;

Nineteen per centum of the amount by which the net estate exceeds nine million one hundred thousand dollars and does not exceed ten million one hundred thousand dollars;

Twenty per centum of the amount by which the net estate exceeds ten million one hundred thousand dollars.

Notwithstanding any of the foregoing provisions of this section or any other provision of this article, there shall be imposed upon the transfer of the net estate of every person who at the time of death was a resident of this state, a tax equal to the maximum credit allowable to the estate of such decedent against the United States estate tax imposed with respect thereto, except that proper reduction of the amount of such tax shall be made on account of any real or tangible personal property forming a part of the gross estate of such decedent which is located outside of the state of New York; but the provisions of this paragraph shall in no event have the effect of reducing the tax otherwise imposed by this article.

The tax imposed by this section shall be paid by the executor, who shall thereupon charge the same against and collect it from the persons interested in the estate in order that it shall be proportionately borne by those who have received the benefit. (L. 1930, c. 710, § 1, as amended by L. 1932, c. 322; L. 1932, c. 326; L. 1933, c. 359; L. 1935, c. 39; L. 1936, c. 126, in effect March 18, 1936.)

§ 249-p. *Tax on estates of nonresident decedents.*

A tax is hereby imposed upon the transfer of so much of the net estate of every person dying on or after the effec-

tive date of this article, who, at the time of death, was a nonresident of this state, as consists of real property situated and tangible personal property having an actual situs in this state. The amount of the tax on such real and tangible personal property shall be determined as follows:

Ascertain the amount of tax which would be payable under this article if the decedent had died a resident of this state with all his property (except real property situated and tangible personal property having an actual situs outside this state) situated or located within this state, and multiply the net tax so ascertained by a fraction the denominator of which shall be the value of the gross estate as ascertained for the purpose of computing such tax and the numerator of which shall be the said gross estate value of the real property situated and the tangible personal property having an actual situs in this state. The product shall be the amount of tax payable to this state. No credit shall be allowed against the tax so determined.

The tax imposed by this section shall be paid by the executor, who shall thereupon charge the same against and collect it from the persons interested in the estate in order that it shall be proportionately borne by those who have received the benefit. (L. 1930, c. 710, § 1.)

§ 249-bb. *Lien of tax; warrant for collection.*

Every such tax shall be and remain a lien upon the property transferred until paid, except that the tax commission shall have power to release the lien hereby imposed with respect to all or any part of such property, if it be satisfied that the collection of the tax will not thereby be jeopardized, and the executor of every estate shall be personally liable for such tax until its payment. (L. 1930, c. 710, § 1, as amended by L. 1930, c. 137; L. 1930, c. 639, § 8, in effect May 8, 1934.)

* * * * *

[These sections are taken from the Tax Law of New York as amended, Book 59 of the Consolidated Laws of New York.]

APPENDIX E.

Pertinent Provisions of the Federal Revenue Acts of 1926 and 1932 as Amended.

SEC. 301. (a) In lieu of the tax imposed by Title III of the Revenue Act of 1924, a tax equal to the sum of the following percentages of the value of the net estate (determined as provided in section 303) is hereby imposed upon the transfer of the net estate of every decedent dying after the enactment of this Act, whether a resident or nonresident of the United States;

1 per centum of the amount of the net estate not in excess of $50,000;

2 per centum of the amount by which the net estate exceeds $50,000 and does not exceed $100,000;

3 per centum of the amount by which the net estate exceeds $100,000 and does not exceed $200,000;

4 per centum of the amount by which the net estate exceeds $200,000 and does not exceed $400,000;

5 per centum of the amount by which the net estate exceeds $400,000 and does not exceed $600,000;

6 per centum of the amount by which the net estate exceeds $600,000 and does not exceed $800,000;

7 per centum of the amount by which the net estate exceeds $800,000 and does not exceed $1,000,000;

8 per centum of the amount by which the net estate exceeds $1,000,000 and does not exceed $1,500,000;

9 per centum of the amount by which the net estate exceeds $1,500,000 and does not exceed $2,000,000;

10 per centum of the amount by which the net estate exceeds $2,000,000 and does not exceed $2,500,000;

11 per centum of the amount by which the net estate exceeds $2,500,000 and does not exceed $3,000,000;

12 per centum of the amount by which the net estate exceeds $3,000,000 and does not exceed $3,500,000;

13 per centum of the amount by which the net estate exceeds $3,500,000 and does not exceed $4,000,000;

14 per centum of the amount by which the net estate exceeds $4,000,000 and does not exceed $5,000,000;

15 per centum of the amount by which the net estate exceeds $5,000,000 and does not exceed $6,000,000;

16 per centum of the amount by which the net estate exceeds $6,000,000 and does not exceed $7,000,000;

17 per centum of the amount by which the net estate exceeds $7,000,000 and does not exceed $8,000,000;

18 per centum of the amount by which the net estate exceeds $8,000,000 and does not exceed $9,000,000;

19 per centum of the amount by which the net estate exceeds $9,000,000 and does not exceed $10,000,000;

20 per centum of the amount by which the net estate exceeds $10,000,000. (Feb. 26, 1926, c. 27, § 301(a), 44 Stat. 69.)

(b) The tax imposed by this section shall be credited with the amount of any estate, inheritance, legacy, or succession taxes actually paid to any State or Territory or the District of Columbia, in respect of any property included in the gross estate. The credit allowed by this subdivision shall not exceed 80 per centum of the tax imposed by this section, and shall include only such taxes as were actually paid and credit therefor claimed within three years after the filing of the return required by section 304. (Feb. 26, 1926, c. 27, § 301-b, 44 Stat. 70; June 6, 1932, c. 209, § 802, 47 Stat. 278.)

SEC. 315. (a) Unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is

used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien. If the Commissioner is satisfied that the tax liability of an estate has been fully discharged or provided for, he may, under regulations prescribed by him with the approval of the Secretary, issue his certificate, releasing any or all property of such estate from the lien herein imposed. * * * (Feb. 26, 1926, c. 27, § 315(a), 44 Stat. 80; May 29, 1928, c. 852, § 613-b, 45 Stat. 876; June 6, 1932, c. 209, § 809, 47 Stat. 283.)

SEC. 401. IMPOSITION OF TAX.

(a) In addition to the estate tax imposed by section 301(a) of the Revenue Act of 1926 there is hereby imposed upon the transfer of the net estate of every decedent dying after the enactment of this Act, whether a resident or nonresident of the United States, a tax equal to the excess of—

(1) the amount of a tentative tax computed under subsection (b) of this section, over

(2) the amount of the tax imposed by section 301(a) of the Revenue Act of 1926, computed without regard to the provisions of this title.

(b) The tentative tax referred to in subsection (a) (1) of this section shall equal the sum of the following percentages of the value of the net estate:

"Upon net estates not in excess of $10,000, 2 per centum.

"$200 upon net estates of $10,000; and upon net estates in excess of $10,000 and not in excess of $20,000, 4 per centum in addition of such excess.

"$600 upon net estates of $20,000; and upon net estates in excess of $20,000 and not in excess of $30,000, 6 per centum in addition of such excess.

"$1,200 upon net estates of $30,000; and upon net estates in excess of $30,000 and not in excess of $40,000, 8 per centum in addition of such excess.

"$2,000 upon net estates of $40,000; and upon net estates in excess of $40,000 and not in excess of $50,000, 10 per centum in addition of such excess.

"$3,000 upon net estates of $50,000; and upon net estates in excess of $50,000 and not in excess of $70,000, 12 per centum in addition of such excess.

"$5,400 upon net estates of $70,000; and upon net estates in excess of $70,000 and not in excess of $100,000, 14 per centum in addition of such excess.

"$9,600 upon net estates of $100,000; and upon net estates in excess of $100,000 and not in excess of $200,000, 17 per centum in addition of such excess.

"$26,600 upon net estates of $200,000; and upon net estates in excess of $200,000 and not in excess of $400,000, 20 per centum in addition of such excess.

"$66,600 upon net estates of $400,000; and upon net estates in excess of $400,000 and not in excess of $600,000, 23 per centum in addition of such excess.

"$112,600 upon net estates of $600,000; and upon net estates in excess of $600,000 and not in excess of $800,000, 26 per centum in addition of such excess.

"$164,600 upon net estates of $800,000; and upon net estates in excess of $800,000 and not in excess of $1,000,000, 29 per centum in addition of such excess.

"$222,600 upon net estates of $1,000,000; and upon net estates in excess of $1,000,000 and not in excess of $1,500,000, 32 per centum in addition of such excess.

"$382,600 upon net estates of $1,500,000; and upon net estates in excess of $1,500,000 and not in excess of $2,000,000, 35 per centum in addition of such excess.

"$557,600 upon net estates of $2,000,000; and upon net estates in excess of $2,000,000 and not in excess of $2,500,000, 38 per centum in addition of such excess.

"$747,600 upon net estates of $2,500,000; and upon net estates in excess of $2,500,000 and not in excess of $3,000,000, 41 per centum in addition of such excess.

"$952,600 upon net estates of $3,000,000; and upon net estates in excess of $3,000,000 and not in excess of $3,500,000, 44 per centum in addition of such excess.

"$1,172,600 upon net estates of $3,500,000; and upon net estates in excess of $3,500,000 and not in excess of $4,000,000, 47 per centum in addition of such excess.

"$1,407,600 upon net estates of $4,000,000; and upon net estates in excess of $4,000,000 and not in excess of $4,500,000, 50 per centum in addition of such excess.

"$1,657,600 upon net estates of $4,500,000; and upon net estates in excess of $4,500,000 and not in excess of $5,000,000, 53 per centum in addition of such excess.

"$1,922,600 upon net estates of $5,000,000; and upon net estates in excess of $5,000,000 and not in excess of $6,000,000, 56 per centum in addition of such excess.

"$2,482,600 upon net estates of $6,000,000; and upon net estates in excess of $6,000,000 and not in excess of $7,000,000, 59 per centum in addition of such excess.

"$3,072,600 upon net estates of $7,000,000; and upon net estates in excess of $7,000,000 and not in excess of $8,000,000, 61 per centum in addition of such excess.

"$3,682,600 upon net estates of $8,000,000; and upon net estates in excess of $8,000,000 and not in excess of $9,000,000, 63 per centum in addition of such excess.

"$4,312,600 upon net estates of $9,000,000; and upon net estates in excess of $9,000,000 and not in excess of $10,000,000, 65 per centum in addition of such excess.

"$4,962,600 upon net estates of $10,000,000; and upon net estates in excess of $10,000,000 and not in excess of $20,000,000, 67 per centum in addition of such excess.

"$11,662,600 upon net estates of $20,000,000; and upon net estates in excess of $20,000,000 and not in excess of $50,000,000, 69 per centum in addition of such excess.

"$32,362,600 upon net estates of $50,000,000; and upon net estates in excess of $50,000,000, 70 per centum in addition of such excess." (June 6, 1932, c. 209, § 401, 47 Stat. 243; May 10, 1934, 11:40 A. M., c. 277, § 405(a), 48 Stat. 754; August 30, 1935, 6:00 P. M., c. 829, § 201(b), 49 Stat. 1022.)

SEC. 402. CREDITS AGAINST TAX.

(a) The credit provided in section 301 (c) of the Revenue Act of 1926, as amended (80 per centum credit), shall not be allowed in respect of such additional tax. (June 6, 1932, c. 209, § 402, 47 Stat. 245; Aug. 30, 1935, 6:00 P. M., c. 829, § 201(b), 49 Stat. 1022.)

* * * * *

APPENDIX F.

Federal Estate Tax

Gross Estate, as per Schedule "A" -------	$44,348,500.
Less Debts and Administration Expense, as per Schedule "A" ----------	2,000,000.
	$42,348,500.

Calculation of Tax

1926 Federal

$ 100,000.	Exempt	
50,000.	1%	$ 500.
50,000.	2%	1,000.
100,000.	3%	3,000.
200,000.	4%	8,000.
200,000.	5%	10,000.
200,000.	6%	12,000.
200,000.	7%	14,000.
500,000.	8%	40,000.
500,000.	9%	45,000.
500,000.	10%	50,000.
500,000.	11%	55,000.
500,000.	12%	60,000.
500,000.	13%	65,000.
1,000,000.	14%	140,000.
1,000,000.	15%	150,000.
1,000,000.	16%	160,000.
1,000,000.	17%	170,000.
1,000,000.	18%	180,000.
1,000,000.	19%	190,000.
32,248,500.	20%	6,449,700.
$42,348,500.		$7,803,200.
	Less 80% Credit for Taxes paid to States	6,242,560.

APPENDIX F (*Continued*)

Net 1926 Tax			$1,560,640.

1935 FEDERAL

$ 40,000.	Exempt		
10,000.	2%	$ 200.	
10,000.	4%	400.	
10,000.	6%	600.	
10,000.	8%	800.	
10,000.	10%	1,000.	
20,000.	12%	2,400.	
30,000.	14%	4,200.	
100,000.	17%	17,000.	
200,000.	20%	40,000.	
200,000.	23%	46,000.	
200,000.	26%	52,000.	
200,000.	29%	58,000.	
500,000.	32%	160,000.	
500,000.	35%	175,000.	
500,000.	38%	190,000.	
500,000.	41%	205,000.	
500,000.	44%	220,000.	
500,000.	47%	235,000.	
500,000.	50%	250,000.	
500,000.	53%	265,000.	
1,000,000.	56%	560,000.	
1,000,000.	59%	590,000.	
1,000,000.	61%	610,000.	
1,000,000.	63%	630,000.	
1,000,000.	65%	650,000.	
10,000,000.	67%	6,700,000.	
22,308,500.	69%	15,392,865.	
$42,348,500.		$27,055,465.	
Less 1926 Gross		7,803,200.	$19,252,265.
Combined 1926 & 1935 Tax			$20,812,905.

APPENDIX G.

TEXAS INHERITANCE AND ESTATE TAX

Intangibles wherever situate, as per Schedule "A"		$37,835,000.
Texas Real Estate		6,000.
Gross Estate		$37,841,000.
Less Proportionate share of Debts and Administration Expenses calculated as follows:		
Texas Gross Estate, as above	37,841,000	
Total Gross Estate wherever situate as per Schedule "A"	44,348,500 = 85.32644%	
$2,000,000 x 85.32644% =		1,706,528.80
		$36,134,471.20

CALCULATION OF TEXAS INHERITANCE TAX

$25,000.	Exempt	
25,000.	1%	$ 250.
50,000.	2%	1,000.
100,000.	3%	3,000.
300,000.	4%	12,000.
500,000.	5%	25,000.
35,134,471.20	6%	2,108,068.27
$36,134,471.20		$2,149,318.27

Total Inheritance Tax $2,149,318.27

CALCULATION OF TEXAS ESTATE TAX

The Estate Tax is the difference between the Inheritance Tax and the proportionate share of 80% of the Federal 1926 Estate Tax calculated on the ratio that the Gross Estate in Texas bears to the Gross Estate wherever situate.

Gross Texas Estate, as above	37,841,000	
Total Gross Estate as per Schedule "A"	44,348,500 = 85.32644%	
80% of 1926 Federal Estate Tax (as per Schedule B) $6,242,560. x 85.32644% =		$5,326,554.21
Less Texas Inheritance Tax, as above		2,149,318.27
Total Texas Estate Tax		$3,177,235.94

COMBINED INHERITANCE AND ESTATE TAX

Inheritance Tax	$2,149,318.27
Estate Tax	3,177,235.94
Total Texas Tax	$5,326,554.21

APPENDIX H.

FLORIDA ESTATE TAX

Intangibles, wherever situate as per Schedule "A"	$37,835,000.
Florida Tangible Personal Property	20,000.
Florida Real Estate	53,000.
Gross Florida Property	$37,908,000.

The Florida Estate Tax is based on that proportion of the 80% credit allowed against the 1926 Federal Estate Tax, that the Florida Property bears to the Gross Estate, wherever situate. Inasmuch as the deductions are taken in arriving at the 1926 Federal Estate Tax (and credit thereby obtained) no deductions are provided for separately in the Florida Law.

CALCULATION OF TAX

Florida Estate, as above — 37,908,000
Gross Estate, wherever situate, as per Schedule "A" — 44,348,500 = 85.4[illegible]

80% of 1926 Federal Estate Tax, as per Schedule B.
$6,242,560 x 85.4[illegible]% = $5,335,985.47

APPENDIX I.

MASSACHUSETTS INHERITANCE AND ESTATE TAX

Intangibles, wherever situate, as per Schedule "A"			$37,835,000.
Massachusetts Tangible Personal Property			3,000,000.
Massachusetts Real Property			434,500.
Gross Estate			$41,269,500.
Less Proportionate share of Debts and Administration Expenses, calculated as follows:			
Massachusetts Gross Estate, as above	41,269,500		
Total Gross Estate as per Schedule "A"	44,348,500	= 93.05726%	
$2,000,000 x 93.05726% =		$ 1,861,145.20	
Federal Estate Tax		20,812,905.00	
New York Estate Tax		7,132,989.92	
Florida Estate Tax		5,335,985.47	
Texas Estate and Inheritance Tax		5,326,554.21	40,469,589.80
			$ 799,910.20

CALCULATION OF INHERITANCE TAX

$ 25,000.	at 1%	$ 250.	
25,000.	at 2%	500.	
200,000.	at 4%	8,000.	
250,000.	at 5%	12,500.	
250,000.	at 6%	15,000.	
49,910.20	at 7%	3,493.71	
		$39,743.71	
Plus 10% additional 1936 Tax		3,974.37	
Total Inheritance Tax		$43,718.08	

CALCULATION OF ESTATE TAX

The Estate Tax is the difference between the Inheritance Tax and the proportionate share of 80% of the 1926 Federal Estate Tax, calculated on the ratio that the Gross Estate in Massachusetts bears to the Gross Estate wherever situate.

Gross Massachusetts Estate, as above	41,269,500		
Gross Estate wherever situate	44,348,500	= 93.05726%	
80% of 1926 Federal Estate Tax (as per Schedule B) $6,242,560 x 93.05726% =			$ 5,809,155.29
Less Inheritance Tax			43,718.08
Estate Tax			$ 5,765,437.21

COMBINED INHERITANCE AND ESTATE TAX

Inheritance Tax	$ 43,718.08
Estate Tax	5,765,437.21
Total Massachusetts Tax	$5,809,155.29

APPENDIX J.

NEW YORK ESTATE TAX

Intangibles, wherever situate as per Schedule "A"	$37,835,000.
New York Tangible Personal Property, as per Schedule "A"	3,000,000.
	$40,835,000.
Less	
Proportionate share of Debts and Administration Expenses, calculated as follows:	
New York Estate, as above / Total Gross Estate as per Schedule "A" — $\frac{40,835,000}{44,348,500} = 92.07752\%$	
2,000,000 x 92.07752% = ...	1,841,550.40
Net Estate Subject to New York Tax	$38,993,449.60

CALCULATION OF TAX

$20,000.	Widow's Exemption	....
130,000.	1%	1,300.
50,000.	2%	1,000.
100,000.	3%	3,000.
200,000.	4%	8,000.
200,000.	5%	10,000.
200,000.	6%	12,000.
200,000.	7%	14,000.
500,000.	8%	40,000.
500,000.	9%	45,000.
500,000.	10%	50,000.
500,000.	11%	55,000.
500,000.	12%	60,000.
500,000.	13%	65,000.
1,000,000.	14%	140,000.
1,000,000.	15%	150,000.
1,000,000.	16%	160,000.
1,000,000.	17%	170,000.
1,000,000.	18%	180,000.
1,000,000.	19%	190,000.
28,893,449.60	20%	5,778,689.92
$38,993,449.60	Total N. Y. Tax	$7,132,989.92

APPENDIX K.

SUMMARY OF PROPOSED INHERITANCE AND ESTATE TAXES

ESTATE

Gross Estate	$44,348,500.00
Less Debts and Administration Expenses	2,000,000.00
Net Estate, before Taxes	$42,348,500.00

TAXES

Federal Estate Taxes as per Appendix "F"	$20,812,905.00
New York Estates Tax as per Appendix "J"	7,132,989.92
Florida Estate Tax as per Appendix "H"	5,335,985.47
Massachusetts Inheritance and Estate Taxes as per Appendix "I"	5,809,155.29
Texas Inheritance and Estate Taxes as per Appendix "G"	5,326,554.21
	$44,417,589.89
DEFICIT	$ 2,069,089.89

SCHEDULE "A".

GROSS ESTATE

Intangibles, wherever situate		$37,835,000.
New York Tangibles—		
Jewelry, Stamps and Coins		3,000,000.
Massachusetts Tangibles—		
Jewelry, Stamps, Coins and Household effects	$3,000,000.	
Real Estate	434,500.	3,434,500.
Florida Tangibles—		
Household effects, etc.	$ 20,000.	
Real Estate	53,000.	73,000.
Texas Real Estate		6,000.
Total Gross Estate		$44,348,500.
Debts and Administration Expenses		2,000,000.
Net Estate		$42,348,500.

FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1936

No. 8 ORIGINAL

THE STATE OF TEXAS,
Complainant,

against

THE STATE OF FLORIDA, *ET AL.*,
Respondents.

MEMORANDUM *RE* BILL OF COMPLAINT

WILLIAM McCRAW,
Attorney General of the State of Texas.

LLEWELLYN B. DUKE,
Assistant Attorney General.

Attorneys for Complainant.
All of Austin, Texas.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1936

No. ____ ORIGINAL

THE STATE OF TEXAS,

Complainant,

versus

THE STATE OF FLORIDA, *ET AL.*,

Respondents.

MEMORANDUM *RE* BILL OF COMPLAINT.

Statement.

In the bill of complaint there are five averments of major importance:

First, the averment that in each of the four States the appropriate authorities assert that that State was the domicile of the decedent and claim that a tax is payable to that State on the intangible property of the decedent, that that State has a lien upon all of the intangible property wherever situated, and that that State proposes to take all lawful steps to secure the enforcement of the lien and the payment of the tax.

Second, the averment that the claims of the four States are made in good faith.

Third, the averment that the property of the decedent situated in Texas is utterly insufficient to pay the amount of the tax claimed by the State of Texas.

Fourth, the averment that the taxes claimed by the States of Texas, Massachusetts, New York and Florida exceed in the aggregate the value of the total assets of the estate after the amount of the Federal estate tax payable to the United States is deducted. The precise figures are alleged in the bill and the computation of them is explained in appendices to the bill.

Fifth, the averment that on account of the foregoing an injury to the pecuniary or proprietary interests of the State of Texas in the intangible property of the estate is threatened.

These averments, and particularly the last three, clearly distinguish the bill from the bill which was sought to be filed in *New Jersey* v. *Pennsylvania*, 287 U. S. 508. There it did not appear that the State of New Jersey would be in any way injured by the collection of the tax which Pennsylvania was about to collect. It was not and could not be alleged either that the property in New Jersey, out of which New Jersey could collect the tax which it claimed, was insufficient or that the entire assets of the estate wherever situated were insufficient to permit the full collection of both the Pennsylvania tax and the New Jersey tax. As we understand it, this Court refused to permit New Jersey to file its bill because of the absence of these averments and because their absence compelled the inference that leave to file the bill was sought not in the interest of the State of New Jersey but in the interest of the estate and its beneficiaries. In our case these averments are made and the fact is that leave to file the bill was and is sought by the

State of Texas solely on its own initiative and in its own interest.

Perhaps nothing more than this is necessary to sustain the sufficiency of the bill. However, since the considerations which, in our opinion, entitle us to leave to file the bill have been greatly clarified since the preparation of our former briefs we think that it is proper that we should submit the following argument.

Argument.

I.

The series of cases in this Court which culminated in *First National Bank* v. *State of Maine*, 284 U. S. 312, lay down the constitutional principle that only one State may collect an inheritance tax upon the intangible property of the decedent and that that State is the one in which the decedent was domiciled at his death. They hold that the Fourteenth Amendment to the Constitution of the United States, which provides that no State may take property without due process of law, prohibits the imposition of an inheritance tax upon intangible property by any State other than that in which the decedent was domiciled. Thus, the determination of what State was the domicile of the decedent constitutes an adjudication that that State has jurisdiction to tax the intangible property of the decedent.

The constitutional principle that the State in which the decedent was domiciled has jurisdiction to tax the intangible property necessarily involves a recognition of the right of the State of the domicile to collect the tax out of intangible property the evidences of which are situated, and the rights represented by which are enforceable, in other States. Both the decision and opinion of this Court in *Milwaukee County* v. *M. E. White Company*, 296 U. S.

368, indicate that such extraterritorial enforcement will be permitted. If the State of the domicile did not have this right the privilege to tax would amount to nothing because avoidance of the tax would be a simple matter. The tax could certainly be avoided by anyone who owned intangible property consisting of rights enforceable in a foreign State and who kept the evidences of that property in that State and probably could be avoided by merely keeping the evidences of indebtedness outside of the State of the domicile of the owner.

These propositions have been laid down by this Court as a part of its recent development of a fair and orderly system of taxation as between the respective States. The underlying purpose, as we understand it, has been to secure fairness and orderliness in taxation, first, as between the States and citizens of the United States and, second, as between the separate States. It is essential to this purpose that there be a procedure whereby if more than one State claims to have been the domicile of the decedent the certainty of multiple litigation and the possibility of ultimate injustice, either to the taxpayer or to a State, may be eliminated. The State of Texas seeks leave to file its bill of complaint in the belief that in conceiving and developing the possibility of invoking the original jurisdiction of this Court before the commencement of litigation in the courts in the four States involved, it is not only serving the interests of the State of Texas in this particular situation but is also contributing to the further development of fairness and orderliness in inheritance taxation.

II.

The suit which the State of Texas seeks to bring is completely different from that which was sought to be brought

in *Iowa* v. *Slimmer*, 248 U. S. 115, or in *New Jersey* v. *Pennsylvania*, 287 U. S. 508.

In *Iowa* v. *Slimmer*, a decedent, who it was claimed by Iowa was domiciled there, had kept the evidences of his intangible property in Minnesota and had not paid the taxes which Iowa claimed had become due to it during his lifetime. Slimmer was appointed executor in Minnesota. Iowa asked leave to file a bill in which it was prayed that such an order be entered "as will insure the dismissal of the Minnesota probate proceedings, and the administration of the estate in Iowa" and that meanwhile an injunction restrain the prosecution of the Minnesota probate proceeding. This Court denied leave to file the bill, saying that the probate courts of Minnesota had jurisdiction over the property of the decedent which was there at the time of his death even if the decedent was domiciled in Iowa and concluded its opinion by saying at page 121:

> "The only effective relief sought is to enjoin the further administration of the estate of the deceased by the courts of Minnesota. It is clear that the State of Iowa is not entitled to such relief."

This is just what the State of Texas does *not* ask in its bill. It has no desire to interfere with any proceedings in any State in connection with the administration and distribution of the estate. It is not necessary to the granting of effective relief in the suit proposed by Texas that there should be any interference with any such proceedings. It is true that if this Court grants leave to file the bill there is a possibility that this suit will decide that for tax purposes the decedent was domiciled in Texas and that in a probate proceeding, say in New York, there will be a determination that the decedent was domiciled in New York. But this will produce no confusion and will not create

a real inconsistency. The possibility exists simply because in connection with the jurisdiction to tax the intangibles a constitutional question is involved which must be decided by this Court—either now or ultimately—and that in connection with the jurisdiction to administer and distribute the estate no constitutional question is involved, so that for that purpose domicile will be decided by the State courts. The question of domicile is a question of fact. It is no novelty in the administration of justice that when the same question of fact arises in different courts there will be different determinations and that seemingly inconsistent judgments dependent on that determination will be entered.

The State which this Court finds to be the domicile of the decedent will be entitled to collect a tax regardless of the decision of the State courts as to who is entitled to the estate on distribution. Conversely, the assets of the estate will be distributed by the courts which have jurisdiction over them in accordance with the determination of domicile by those courts, regardless of what State may be entitled to collect a tax. It may be that if the first final judgment should be obtained in this Court the finding of the fact of domicile would be *res adjudicata* as between the respondent Green and the respondent Wilks in the assertion of their respective claims to the estate in a State court. But even if that be so there would still be no interference with probate jurisdiction. The court having jurisdiction of the assets of the estate for purposes of distribution would still be free to distribute the property as it might see fit. It is true that probate courts generally distribute the property subject to their jurisdiction in accordance with the law of the domicile of the decedent, but they are under no legal obligation to do so and may distribute the property as they see fit. (*Iowa* v. *Slimmer*, 248 U. S. 115; *Baker* v. *Baker, Eccles & Company*, 242 U. S. 395.)

Turning to the case of *New Jersey* v. *Pennsylvania*, 287 U. S. 508, it will be remembered that we have already pointed out a fundamental distinction between the bill sought to be filed there and the bill which the State of Texas seeks leave to file (see page 2 of this memorandum). There are other important differences. New Jersey was asking this Court to restrain by injunction the collection by Pennsylvania of a tax which had been imposed after litigation which went to the highest court in Pennsylvania and in which this Court refused to review on certiorari the final judgment of the State courts. The State of Texas asks no injunction against any proceeding by any State. It asks only that this Court shall, in advance of litigation in the State courts, determine which one of the States is the one which under the Constitution may impose a tax. It justifies its request to this Court to make this determination, first, because under the Constitution this is the only Court in which the four claimant States may with perfect equality present their claims in a suit to which all of them are parties and, second, because a constitutional question being involved, this is the Court to which resort must ultimately be had to determine which of the four States has the right to impose the tax.

That this is the only court in which the four claimant States may with perfect equality present their claims in a suit to which all of them are parties is obvious. That this is the court to which resort must ultimately be had to determine which of the four States has the right to impose the tax may need some explanation. The explanation is that the Green Estate will not do what the Dorrance Estate did and fail to raise the constitutional question of the right of any given State to collect a tax upon the intangible property but will promptly and properly raise that question in the courts of each State which claims a tax. Thus, the ques-

tion of domicile ultimately will be presented to this Court for adjudication—not once but as many times as there may be States the highest courts of which have found the domicile of the decedent to have been within that State, for the request to review by certiorari must be made by the estate in each and every such instance.

III.

The judgment sought by the State of Texas will be a self-enforcing judgment. It will be a judgment that a designated State was the domicile of the decedent at his death, which is the equivalent of a judgment that that State has jurisdiction to impose an inheritance tax upon the intangible property of the decedent and that no other State has such jurisdiction. Such a judgment will be self-enforcing in just the same way that a judgment of this Court adjudicating the unconstitutionality of any threatened action by a State is self-enforcing. It will be self-enforcing in just the same way that a judgment of this Court which is entered on certiorari and which reverses the order of a State court imposing an inheritance tax upon the intangible property of the decedent Green—such reversal being based upon the ground that the decedent was not domiciled in that State—would be self-enforcing. It will be self-enforcing in just the same way that the judgments of this Court in the various boundary dispute cases decided by it have been self-enforcing. If any difficulty in the enforcement of the judgment is to be foreseen it is to be foreseen, we assume, upon the ground that the parties are sovereign States. But the same difficulty would always be foreseeable in any suit in this Court between States, and if the foreseeing of it be a proper basis for refusing jurisdiction in this case it would be a reason for refusing jurisdiction in all cases between States.

The analogy of the boundary dispute cases deserves consideration. *Iowa* v. *Illinois*, 147 U. S. 1, was a typical boundary case. In that case the course of the Mississippi River had changed and the question was the extent of the jurisdiction of the States of Iowa and Illinois to police and tax the bridges across the river. One of the allegations in the bill was that the corporation which owned one of the bridges complained of the double taxation to which it was subjected. This Court said that the respective jurisdictions of the States depended upon the location of the middle of the main navigable channel of the river. It "ordered, adjudged and declared that the boundary line between the State of Iowa and the State of Illinois is the middle of the main navigable channel of the Mississippi River". It further ordered

> "that a commission be appointed to ascertain and designate * * * the boundary line between the two States, such commission, * * * to be required to make the proper examination and to delineate on maps prepared for that purpose the true line as determined by this court, and report the same to the court for its further action."

The final judgment entered some years later was entered on stipulation of counsel and was merely to the effect that the boundary line was the middle of the main navigable channel of the Mississippi River.

Georgia v. *South Carolina*, 257 U. S. 516, is another typical boundary case. There the question for determination was whether the State of Georgia or the State of South Carolina had jurisdiction over certain areas of land most of which consisted of islands in the boundary rivers. It appeared that the taxation of dams and hydroelectric plants in the boundary rivers rendered "the decision of

the questions involved of importance to the two states". The Court, after stating its conclusions with respect to the boundary line and the respective jurisdictions of the two States, gave its judgment that

> "Counsel may present a decree, within thirty days, to carry into effect these conclusions of the court, with or without a commission to locate and monument the boundary line, as they may be advised. The costs of suit will be equally divided between the two states." (257 U. S. 523.)

The final decree is given in full in 259 U. S. 572. It stated:

> "It is ordered, adjudged, and decreed that the boundary between the States of Georgia and South Carolina is and shall be the rivers Savannah, Tugaloo and Chattooga to the point where the latter river touches the North Carolina line at the thirty-fifth parallel of North latitude; and the location of the boundary line between said States is hereby established and declared to be as set forth in the opinion of the court as follows: * * *"

Then followed four specific statements about the location of the boundary and the final statement:

> "It is further ordered, adjudged, and decreed that the costs of this suit shall be equally divided between the said two States and that the Clerk of this court shall forthwith transmit to the Chief Magistrates of the States of Georgia and South Carolina copies of this decree, duly authenticated under the seal of the court."

In these and other cases this Court did not question its jurisdiction to adjudicate the controversies presented and apparently was not troubled by any question of the enforceability of the judgments which it entered. Yet, it is clear that the controversies and the judgments were identical in their

nature to the controversy sought to be presented in this case and the nature of the judgment prayed for. In the boundary dispute cases the issue was which of the two States had jurisdiction over certain land or things pursuant to which it might levy taxes and exert its police power. The controversy sought to be presented in the present instance is which one of the four States has jurisdiction to impose an inheritance tax upon certain identifiable items of intangible property. In the boundary dispute cases the determination of the controversy was dependent upon a question of fact which, under the usual practice, is referable to a Master. In our case the determination of the controversy is dependent upon the question of fact of the domicile of the decedent which is referable to a Master. In the boundary dispute cases the judgment was not that a State recover a certain amount of money or land or things. The judgment was that certain land or things are subject to the jurisdiction of one or the other of the claimant States. The judgment sought in the suit now proposed is in all legal respects identical. It is that certain identifiable items of intangible property are subject to the jurisdiction of one of the four States to impose an inheritance tax. In the boundary dispute cases there was the same opportunity that exists here to argue that the real dispute is not between the claimant States, but is between each separate claimant State and the individuals who own the property jurisdiction over which is in dispute. In some of those cases that argument was made. In all of them the fallacy of such an argument was recognized by this Court. In the boundary cases it is admitted that there is a dispute between each separate State and the individual taxpayers, but it is recognized that that is no reason why the Court, when its original jurisdiction is invoked, should not take jurisdiction to adjudicate the fundamental issue of which State it is that has jurisdiction and by such

adjudication eliminate both the controversy between the States and the controversies between each separate State and the individual taxpayers in the disputed territory. Indeed, if we read the cases correctly, the existence of issues between each separate State and the taxpayers was one of the reasons why this Court took jurisdiction. It would seem that the same line of reasoning should apply in the present instance. The proposed suit offers an opportunity conclusively to adjudicate the question of domicile for tax purposes and thereby not only to adjudicate the controversy between the States in a suit in which all of them are parties, but also to eliminate the necessity for litigation between each separate State and the estate.

IV.

Texas does not base its request for judgment upon the Declaratory Judgments Act or in any way rely upon that statute. Indeed, the judgment prayed for is not a declaratory judgment in the strict sense. It is a judgment in a suit between States and as we have seen, it is inherent in the nature of many of these suits that the appropriate judgment is not for money or an injunction. The judgment takes the form which the nature of the issue between the States calls for. If, for example, the issue is which of two States has jurisdiction over certain disputed territory, the appropriate form for the judgment to take is that the boundary line between the two States lies in a designated course, for that will automatically settle the question of jurisdiction. So, in the present instance, the form of the judgment prayed for seems appropriate. The judgment prayed for is a determination of the domicile of the decedent, for that will automatically settle the question of the jurisdiction to tax the intangible property of the decedent. The determination

of the question of fact of the domicile of the decedent in our case is the equivalent of the adjudication of the location of the boundary line in the boundary cases. *It is not too much to say that the determination of the domicile of the decedent is the determination of the boundary line of the jurisdiction to tax the intangible property of the decedent.*

The judgment prayed for by the State of Texas is no more objectionable on the ground that it is merely declaratory than were the judgments entered in many of the boundary dispute cases. As Mr. Justice Stone said in *Nashville C. & St. Louis Railway Co.* v. *Wallace*, 288 U. S. 249, at page 263:

> "While the ordinary course of judicial procedure results in a judgment requiring an award of process or execution to carry it into effect, such relief is not an indispensable adjunct to the exercise of the judicial function. *Fidelity National Bank* v. *Swope*, *supra*, 1932. This Court has often exerted its judicial power to adjudicate boundaries between states although it gave no injunction or other relief beyond the determination of the legal rights which were the subject of controversy between the parties, * * *."

If any justification of the entry of such a judgment as is entered in boundary dispute cases and as is sought here be necessary, it is to be found in the nature of the original jurisdiction of the Supreme Court to determine controversies between States. As long ago as 1799, Mr. Justice Washington said in a boundary dispute case, *Fowler* v. *Lindsey*, 3 Dallas, 411, 413:

> "I will not say, that a State could sue at law for such an incorporeal right, as that of sovereignty and jurisdiction; but even if a Court of law would not afford a remedy, I can see no reason why a remedy should not be obtained in a Court of Equity. The State of

> *New York* might, I think, file a bill against the State of *Connecticut*, praying to be quieted as to the boundaries of the disputed territory; and this Court, in order to effectuate justice, might appoint commissioners to ascertain and report those boundaries."

In *Haas* v. *Louisiana*, 134 U. S. 1, Mr. Justice BRADLEY said, at page 15:

> "Some things, undoubtedly, were made justiciable [by the Constitution] which were not known as such at the common law; such, for example, as controversies between States as to boundary lines, and other questions admitting of judicial solution."

In *Missouri* v. *Illinois and the Sanitary District of Chicago*, 180 U. S. 208, which was a suit by the State of Missouri to restrain action by the Sanitary District of Chicago, acting under authority derived from the State of Illinois, on the ground that it constituted a nuisance dangerous to the health of the people of Missouri, Mr. Justice SHIRAS said, at page 240:

> "The cases cited show that such jurisdiction has been exercised in cases involving boundaries and jurisdiction over lands and their inhabitants, and in cases directly affecting the property rights and interests of a State. But such cases manifestly do not cover the entire field in which such controversies may arise, and for which the Constitution has provided a remedy; and it would be objectionable, and, indeed, impossible, for the court to anticipate by definition what controversies can and what cannot be brought within the original jurisdiction of this court.
>
> An inspection of the bill discloses that the nature of the injury complained of is such that an adequate remedy can only be found in this court at the suit of the State of Missouri. It is true that no question of boundary is involved, nor of direct property rights be-

> longing to the complainant State. But it must surely be conceded that, if the health and comfort of the inhabitants of a State are threatened, the State is the proper party to represent and defend them. If Missouri were an independent and sovereign State all must admit that she could seek a remedy by negotiation, and, that failing, by force. Diplomatic powers and the right to make war having been surrendered to the general government, it was to be expected that upon the latter would be devolved the duty of providing a remedy and that remedy, we think, is found in the constitutional provisions we are considering."

See, also, *Georgia* v. *Tennessee Copper Company*, 206 U. S. 230.

Accordingly, it seems unnecessary and inappropriate to burden the Court with an extended appraisal of the sufficiency of the proposed bill as against the tests so carefully laid down in *Aetna Life Insurance Co.* v. *Haworth*, decided at this term. It may be worth while, however, to demonstrate that the proposed bill squarely meets the general and ultimate test required by that case, namely, whether the issue is one "that is appropriate for judicial determination." The only possible suggestion to the contrary is that at this time there is something hypothetical, abstract, academic or moot about the controversy. But there is not. Nothing in the nature of an advisory opinion is sought. All of the facts which go to make a controversy between adversary parties now exist. The decedent has lived his life and the way in which he lived it has raised the issue as to the State of his domicile. The decedent has died. Each of four States in good faith claims that the decedent was domiciled within its borders, and that therefore it is entitled to impose an inheritance tax upon the intangible property of the decedent. One of these States asks leave to bring the others into this Court in order that the question

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Supreme Court of the United States.

OCTOBER TERM, 1936.

No. 13, Original.

STATE OF TEXAS, *Complainant*,

v.

STATE OF FLORIDA *et al.*, *Respondents*.

ANSWER OF THE COMMONWEALTH OF MASSACHUSETTS.

PAUL A. DEVER,
Attorney General for the
Commonwealth of Massachusetts.
JAMES J. RONAN,
Assistant Attorney General.

ADDISON C. GETCHELL & SON, LAW PRINTERS, BOSTON.

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ANSWER OF THE COMMONWEALTH OF MASSACHUSETTS.

And now comes the respondent Commonwealth of Massachusetts and answers the bill of complaint heretofore filed in the above proceeding as follows:

1. This respondent admits all the allegations contained in the first paragraph of the bill, except those pertaining to the residence and the inhabitancy of the two individual respondents, and says that as to them it is ignorant and can neither admit nor deny the same, and calls upon the complainant to prove the same, if material.

2. This respondent denies the allegations contained in the second paragraph of the bill, that the case purported to be set forth in said bill is of a civil nature between

two or more sister States and between a State and citizens of another State, and that it is within the original jurisdiction of this Court.

3. This respondent admits that there was at the times alleged in the third paragraph of the bill a transfer, succession or inheritance tax in the State of Texas which was assessable upon the real and tangible personal property situated in said State in the case of a non-resident decedent and upon the real, tangible and intangible personal property in the case of a resident decedent, but whether the authority to impose such a tax is governed by the statutes therein enumerated, or whether the tax is computed in the manner therein alleged, or constitutes a lien upon the decedent's property, as alleged in said paragraph, are all matters concerning which this respondent is without knowledge and so can neither admit nor deny the same, but calls upon the complainant to prove the same, if material.

4. This respondent admits the allegations contained in the fourth paragraph of the bill.

5. This respondent admits that there was in the State of Florida at the time alleged in the fifth paragraph of the bill a transfer, succession or inheritance tax assessed upon the real and personal property of resident decedents and on the real and tangible personal property of non-resident decedents which was located within that State, but whether the authority to impose such a tax is governed by the statutes therein enumerated, or whether the tax is computed in the manner alleged therein, or con-

stitutes a lien upon the decedent's property, as therein alleged, are all matters concerning which this respondent is without knowledge and so can neither admit nor deny the same, but calls upon the complainant to prove the same, if material.

6. This respondent admits the allegations contained in the sixth paragraph of the bill.

7. This respondent admits that there was upon the date alleged in the seventh paragraph of the bill a transfer, succession or inheritance tax in the State of New York, and that such a tax is assessed on a resident decedent's real estate and tangible personal property located in that State and his intangible personal property, and that in the case of a non-resident such tax is assessable upon the real estate and tangible personal property located within said State, but whether the authority to impose such a tax is governed by the statutes therein enumerated, or whether the tax is computed in the manner alleged therein, or constitutes a lien upon the decedent's property, as therein alleged, are all matters concerning which the respondent is without knowledge, and so can neither admit nor deny the same, but calls upon the complainant to prove the same, if material.

8. This respondent admits the allegations contained in the eighth paragraph of the bill.

9. This respondent denies the allegations contained in the ninth paragraph of the bill, that the estate tax of the United States is not affected by the determination of the

State of domicile, or that the amount of the said United States estate tax is not thereby affected.

10. This respondent admits that the decedent, Edward H. R. Green, died on or about the date mentioned in the tenth paragraph of the bill while he was temporarily sojourning in Essex County in the State of New York. It denies that at the time of his death the said Green was domiciled in the State of Texas, and says that at that time and for years prior thereto the said decedent was domiciled in the Commonwealth of Massachusetts. This respondent admits that at the time of his death the decedent was possessed of property of great value, but is ignorant as to whether the said property is fully and correctly set forth, as alleged in said paragraph.

11. This respondent is ignorant as to each and every allegation contained in the eleventh paragraph of the bill as to the kind, location, value or amount of property alleged to have been owned by the decedent at the time of his death or the amount of his then indebtedness, and so is unable to admit or deny the said allegations, but leaves them to the complainant to prove, if material. This respondent admits that at the time of his death the decedent was the owner of real estate situated in the Commonwealth of Massachusetts and of the approximate value of four hundred and sixty-five thousand dollars, and of tangible personal property located within the said Commonwealth of the approximate value of three million dollars, and of intangible personal property located in

said Commonwealth of the approximate amount of thirty thousand dollars.

12. As to the allegations contained in the twelfth paragraph of the bill, this respondent admits that there has not been filed any Federal tax return; and further admits that the estate is subject to the United States estate tax, but is ignorant as to the amount of the tax that might be imposed, and calls upon the complainant to prove the same, if material.

13. As to the allegations contained in the thirteenth paragraph of the bill, this respondent is ignorant as to whether or not any of the property of the decedent is subject to the succession, transfer or inheritance tax laws of the State of Texas. It denies that the State of Texas is entitled to a tax in the amount set forth in said paragraph; and further denies that the State of Texas is entitled to impose any such tax upon any of the intangible property of the decedent as shown by the calculation referred to in the said paragraph or to impose any tax whatsoever upon any of the intangible property of the decedent.

14. As to the allegations contained in the fourteenth paragraph of the bill, this respondent is ignorant as to whether or not any of the property of the decedent is subject to the succession, transfer or inheritance tax laws of the State of Florida. It denies that the State of Florida is entitled to a tax in the amount set forth in said paragraph; and further denies that the State of Florida is

entitled to impose any such taxes upon any of the intangible property of the decedent as shown in the calculation referred to in the said paragraph, or to impose any tax whatsoever upon any of the intangible property of the decedent.

15. The respondent admits that it is entitled to impose and collect a transfer, succession and inheritance tax in the substantial manner set forth in the fifteenth paragraph of the bill, but it is unable at present to state the amount of the said tax because it does not know the value of the said estate or who or in what proportions the persons entitled thereto will take, and, consequently, cannot admit nor deny that the amount of the tax mentioned in said paragraph is correct, but calls upon the complainant to prove the same, if material.

16. As to the allegations contained in the sixteenth paragraph of the bill, this respondent is ignorant as to whether or not any of the property of the decedent is subject to the succession, transfer or inheritance tax laws of the State of New York. It denies that the State of New York is entitled to the tax in the amount set forth in said paragraph; and further denies that the State of New York is entitled to impose any such tax upon any of the intangible property of the decedent as shown in the calculation referred to in said paragraph or to impose any tax whatsoever upon any of the intangible property of the decedent.

17. The respondent denies the allegations contained in the seventeenth paragraph that the United States and the other States therein named will attempt to collect a tax of the total amount therein enumerated. It denies that the total net estate is approximately the figure mentioned in the said paragraph; and further denies that the amount of the estate will be insufficient by the amount therein named or by any other amount to pay any taxes to the State of Texas if the said State is entitled to levy and collect any taxes. This respondent says that it is ignorant as to the correctness of the figures and the summaries referred to in said paragraph, and so can neither admit nor deny their correctness, and calls upon the complainant to prove the same, if material.

18. This respondent admits that one of the issues set forth in the bill is what State of those named in the eighteenth paragraph was the domiciliary State of the decedent at the time of his death; and further admits that the adjudication of the question of domicile will determine the State that is entitled to impose an inheritance tax upon the intangible property of the decedent.

19. The respondent admits that the respondent Hetty Sylvia Ann Howland Green Wilks is the sister and the respondent Mabel Harlow Green is the widow of the decedent, as alleged in the nineteenth paragraph of the bill. As to the claims made by each of these two individual respondents, as averred in said paragraph, this respondent says it is without knowledge and so can neither admit nor

deny the same, and calls upon the complainant to prove the same, if material.

20. This respondent admits the allegations contained in the twentieth paragraph of the bill.

21. As to the allegations contained in the twenty-first paragraph of the bill, this respondent admits that the decedent was born abroad, but denies he was domiciled in Vermont; it denies he made his home in Texas, and further denies that he ever had or continued to have his domicile in Texas up to the time of his death. The respondent admits that, since 1910 and up to the time of his death, the decedent was, during most if not all of the time, outside of the State of Texas, but denies that his alleged absence from said Texas was due to the matters and things alleged in said paragraph, and denies that the decedent did not declare and manifest any intention or purpose of abandoning his residence and domicile in Texas, if he ever had any, which this respondent denies. This respondent denies that he ever intended to have or to retain his residence or domicile in Texas or that he ever declared or manifested any such intention or that he avoided any conduct or actions which might constitute him a resident or inhabitant of some other State; and further says that he did by his conduct and actions have and continue to have a domicile in the Commonwealth of Massachusetts, which he had and retained up to the time of his death.

22. This respondent denies the allegation contained in the twenty-second paragraph of the bill to the effect that the decedent was domiciled at his death in the State of Texas, and denies that he was domiciled in any of the other States therein mentioned excepting only the Commonwealth of Massachusetts, which this respondent admits was the domiciliary State at the time of the death of the decedent.

23. This respondent admits that each of the States named in the twenty-third paragraph of the bill claims in good faith that the decedent at the time of his death was domiciled in their said respective States, and that they claim that the payment of a death tax is a condition precedent to succession to the tangible personal property of the decedent located within any of the respective States and to the intangible property wherever located. The respondent is ignorant as to whether a lien to secure the payment of a death tax exists in any or all of the States mentioned in the said paragraph, excepting that it admits that such a lien does in fact exist upon property subject to the payment of a death tax to the Commonwealth of Massachusetts.

24. Whether the value of the property located in the State of Texas is insufficient to pay the tax, if any, that might be found due said State as alleged in the twenty-fourth paragraph of the bill, is a matter not within the knowledge of this respondent, who is, therefore, unable to

admit or deny the said allegation, but calls upon the complainant to prove the same, if material.

25. This respondent is ignorant as to the truth of the allegations contained in the twenty-fifth paragraph that there is not sufficient property to satisfy the tax claims asserted by the States mentioned in said paragraph and of the United States, and that there will not be enough property to pay the State of Texas under the circumstances set forth in the said paragraph, and as to all such matters and things this respondent says it has no actual knowledge and so can neither admit nor deny the same, and calls upon the complainant to prove the same, if material.

26. As to the allegations contained in the twenty-sixth paragraph of the bill, this respondent is without knowledge as to the matters contained in clauses (a), (b), (c), (d) and (e), and so can neither admit nor deny the same, except that it admits that, as alleged in clause (c), the Commonwealth of Massachusetts entered an appearance in the proceeding therein mentioned, but that said appearance has been stricken out, as alleged in said clause. This respondent admits the allegations contained in clause (f).

27. This respondent admits the allegations contained in the twenty-seventh paragraph in so far as they pertain to this respondent, and as to the remaining allegations referring to the other States, this respondent says it has no knowledge as to the truth of such allegations and so can

neither admit nor deny the same, and calls upon the complainant to prove the same, if material.

28. This respondent says that the allegation contained in the twenty-eighth paragraph of the bill is a mere conclusion of law not calling for an answer from it, but that, if any of the said allegations may be determined to be allegations of fact, then it denies such allegations.

29. This respondent says that the allegations contained in the twenty-ninth paragraph of the bill are mere conclusions of law not calling for an answer from it, as to which it submits itself to the judgment of this Honorable Court, but that if any such allegations should be determined to be allegations of fact, then this respondent denies all such allegations.

30. This respondent admits, in so far as the allegations contained in the thirtieth paragraph refer to it, that no adjudication has been made in the Commonwealth of Massachusetts as to the domicile of the decedent, and neither has any adjudication been made in said Commonwealth as to the liability to a death tax, nor has the amount of any such tax been determined in said Commonwealth. This respondent admits that the question of domicile must be decided before the question of tax liability may be settled, but denies that such question of domicile for the aforesaid purpose cannot be decided in a court which does not have jurisdiction of all the parties to the said cause. This respondent is ignorant as to the truth of the remaining allegations in the said paragraph con-

tained, and so can neither admit nor deny the same, and calls upon the complainant to prove the same, if material.

31. This respondent admits that each of the States enumerated in the thirty-first paragraph is claiming to be the domiciliary State of the decedent; and further admits that each of the said States is attempting to collect a death tax upon the intangible personal property of the decedent and upon the realty and tangible personal property of the decedent located within the limits of such respective claiming State, but whether the said States other than this respondent are asserting a lien for the amount set forth in the said paragraph, this respondent is ignorant, and neither admits nor denies the same, and calls upon the complainant to prove the same, if material. This respondent admits that it is claiming and asserting its right as the domiciliary State of the decedent to enforce a lien for taxes as set forth in said paragraph; and further admits that the proceedings referred to in said paragraph have been held in the said Commonwealth of Massachusetts, and that in accordance therewith the conservator, who was appointed thereunder, has taken possession of the tangible personal property and of the real estate of the decedent, as set forth in said paragraph, and that the said Commonwealth of Massachusetts is asserting a lien for such death taxes. As to the remaining allegations contained in said paragraph referring to the State of Florida and to the State of New York in the procedure therein alleged for the purpose of collecting

a death tax as the domiciliary State of the decedent, this respondent says that it is ignorant and can neither admit nor deny the same, and calls upon the complainant to prove the same, if material.

32. This respondent denies that any rights of the complainant as alleged in the thirty-second paragraph are in jeopardy, injured or damaged, all as alleged in the said paragraph, and denies that it is entitled to any relief as referred to in the aforesaid paragraph.

33. As to the allegations contained in the thirty-third paragraph, this respondent denies that the complainant will be unable to enforce any lien, if any it has, for a death tax upon the estate of the said decedent in the amount mentioned or in any other amount, or that the State will be deprived of its right to a lien in the amount mentioned, or for any other amount, or will be denied relief unless this Honorable Court takes jurisdiction and determines the question of domicile; all as alleged in said paragraph.

34. This respondent is ignorant as to the truth of the allegations contained in the thirty-fourth paragraph, and so can neither admit nor deny the same, but calls upon the complainant to prove the same, if material.

35. This respondent denies the allegation contained in the thirty-fifth paragraph.

36. This respondent denies the allegation contained in the thirty-sixth paragraph that the complainant is without an adequate remedy save in the manner set forth in said paragraph. The remaining allegations of said para-

graph are concerning matters and things not calling for an answer from this respondent.

37. This respondent says that the thirty-seventh paragraph of the bill is composed of a prayer for relief by the complainant and does not require an answer from this respondent.

38. This respondent says that the allegations contained in the thirty-eighth paragraph constitute a mere prayer for general relief not calling for an answer from this respondent.

39. And further answering, this respondent says that the decedent, Edward H. R. Green, at the time of his death in June, 1936, and for many years prior thereto, was domiciled in the Commonwealth of Massachusetts, and that the said Commonwealth, as the domiciliary State of the said decedent, is entitled to impose and collect a transfer, succession and inheritance tax upon the real estate and tangible personal property owned by the decedent at the time of his death and located within the said Commonwealth of Massachusetts and also a right to collect the aforesaid tax upon all the intangible personal property, then owned by the decedent, wherever the same may be located.

WHEREFORE this respondent prays that this Honorable Court may determine, declare and adjudge that the said Edward H. R. Green, for the purposes of transfer, legacy and succession or inheritance and estate taxes, was domi-

ciled at the time of his death within the Commonwealth of Massachusetts and not within the State of Texas, the State of Florida or the State of New York, and further may determine, declare and adjudge that the Commonwealth of Massachusetts, and it alone, has exclusive right and jurisdiction to impose and collect such taxes upon the intangible personal property owned by the said decedent at the time of his death. And the respondent further prays for all other, further, different and additional relief as this Honorable Court may deem expedient, and offers to do all such equity as this Honorable Court shall require.

PAUL A. DEVER,
Attorney General for the
Commonwealth of Massachusetts.
JAMES J. RONAN,
Assistant Attorney General.

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MAY 24 1937
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term, 1936.

~~108~~ 7

No. 43 Original.

THE STATE OF TEXAS,
Complainant,

against

THE STATE OF FLORIDA, *et al.*,
Respondents.

ANSWER OF THE RESPONDENT, THE STATE OF NEW YORK.

JOHN J. BENNETT, JR.,
Attorney General of New York.

SETH T. COLE,
Special Assistant
Attorney General.

MORTIMER M. KASSELL,
Attorneys for Respondent,
The State of New York.

BATAVIA TIMES, LAW PRINTERS,
BATAVIA, N. Y.

IN THE

Supreme Court of the United States

October Term, 1936.

No. 13 Original.

THE STATE OF TEXAS,
Complainant,

against

THE STATE OF FLORIDA, *et al.*,
Respondents.

ANSWER OF THE RESPONDENT, THE STATE OF NEW YORK.

To the Honorable the Chief Justice of the United States and the Associate Justices constituting the Supreme Court of the United States:

Answering the bill of complaint herein, the respondent, the State of New York, says:

1. Answering Paragraphs numbered 1, 2, 8, 9, 18, 20, 23, 28, 29, 30, 34, 35 of the bill of complaint, this respondent admits all and singular the averments therein contained.

2. Answering Paragraphs numbered 24, 32, 33 of the bill of complaint, this respondent denies all and singular the averments therein contained.

3. Answering Paragraphs numbered 3, 5, 6 and 26 of the bill of complaint, this respondent, upon infor-

mation and belief, admits all and singular the averments therein contained.

4. Answering Paragraph numbered 4 of the bill of complaint, this respondent admits that there was in effect throughout the month of June, 1936 and had been continuously in effect for a long time prior thereto, Article 10-C of the Tax Law of the State of New York, which imposes a tax upon estates of residents and nonresidents, and that the United States of America had in effect during the month of June 1936 and for a long time prior thereto a law imposing an estate tax upon the estates of decedents, and, upon information and belief, this respondent admits that the Commonwealth of Massachusetts and the State of Florida each had in effect during the month of June, 1936 and for a long time prior thereto, a law imposing a transfer, succession, inheritance or estate tax upon the right of succession or inheritance.

5. Answering Paragraph numbered 7 of the bill of complaint, this respondent denies all and singular the averments therein contained except that it admits that the State of New York had in effect during the month of June 1936 and for a long time prior thereto a law imposing a tax on estates of residents and nonresidents. Said Estate Tax is provided for by Article 10-C of the Tax Law, a general law of the State of New York. Said article was added by Chapter 710 of the Laws of 1930 and amendments have been made to various sections contained in said Article by Chapters 62, 134, 135, 136, 137 and 151 of the Laws of 1931; Chapters 156, 320, 322, 323, 325, 326 and 333 of the Laws of 1932; Chapters 359, 459 and 460 of the Laws of 1933; Chapters 63, 434 and 639 of the Laws of 1934;

Chapters 39, 421 and 499 of the Laws of 1935 and by Chapters 126, 576 and 666 of the Laws of 1936. There is imposed by said Article a tax, on the transfer of net estates of decedents, which net estate is determined, in the case of resident decedents, by including in the gross estate the value at the time of death of all property, real and personal, tangible or intangible, wherever situated, except real property situated and tangible personal property having an actual situs outside the State of New York. In the case of a nonresident the tax is imposed upon the transfer of so much of the net estate as consists of real property situated and tangible personal property having an actual situs in the State of New York, determined in accordance with the formula contained in Section 249-p of said Tax Law. The rates are graduated, an increased rate being applicable on the amount in each succeeding bracket (Section 249-n). The amount of the tax is a lien upon the property transferred until paid (Section 249-bb). Said Article 10-C also contains a provision which in certain instances, bases the tax, in part, on the amount of the credit allowable against the Federal estate tax.

6. Answering Paragraph numbered 10 of the bill of complaint, this respondent admits that the decedent, Edward H. R. Green, died in Essex County, N. Y. in the month of June, 1936, but denies that he was domiciled within the State of Texas or in the City of Terrell in the County of Kaufman in said State at the time of his death, and is without knowledge or information as to the extent, location, character and value of the property possessed by the decedent at the time of his death except that this respondent admits, upon

information and belief, that the property possessed by the decedent at the time of his death was valued at upwards of $50,000,000.

7. Answering Paragraph numbered 11 of the bill of complaint, this respondent is without knowledge or information concerning all and singular the averments therein contained.

8. Answering Paragraph numbered 12 of the bill of complaint, this respondent admits all and singular the averments therein contained, assuming the value of the property of the estate of the said Edward H. R. Green to be substantially as alleged in the bill of complaint.

9. Answering Paragraph numbered 13 of the bill of complaint, this respondent denies all and singular the averments therein contained except that it admits that the State of Texas is entitled to levy and collect a transfer, succession, inheritance or estate tax upon the real and tangible personal property, possessed by the decedent at the time of his death, which is situated within the State of Texas.

10. Answering Paragraph numbered 14 of the bill of complaint, this respondent is without knowledge or information as to all and singular the averments therein contained except that it admits that the State of Florida is entitled to levy and collect a transfer, succession, inheritance or estate tax upon the real and tangible personal property, possessed by the decedent at the time of his death, which is situated within the State of Florida.

11. Answering Paragraph numbered 15 of the bill of complaint, this respondent is without knowledge or information as to all and singular the averments therein contained, except that it admits that the Commonwealth of Massachusetts is entitled to levy and collect a transfer, succession, inheritance or estate tax upon the real and tangible personal property, possessed by the decedent at the time of his death, which is situated within the Commonwealth of Massachusetts.

12. Answering Paragraph numbered 16 of the bill of complaint, this respondent admits all and singular the averments therein contained, assuming the value of the property of the estate of the said Edward H. R. Green to be substantially as alleged in the bill of complaint.

13. Answering Paragraph numbered 17 of the bill of complaint, this respondent is without knowledge or information as to the amount of the total net estate or the amount of transfer, succession, inheritance or estate taxes which the State of Florida or the Commonwealth of Massachusetts will attempt to collect, and denies that the State of Texas is entitled to collect taxes in the approximate amount of $5,326,000.

14. Answering Paragraph numbered 19 of the bill of complaint, this respondent admits all and singular the averments therein contained except that it is without knowledge or information as to whether Mabel Harlow Green asserts the right and privilege of succession to the whole of the tangible and intangible property owned by Edward H. R. Green at the time of his death.

15. Answering Paragraph numbered 21 of the bill of complaint, this respondent is without knowledge or information as to all and singular the averments therein contained, except that it denies that Edward H. R. Green was domiciled in the State of Texas at the time of his death on June 8, 1936.

16. Answering Paragraph numbered 22 of the bill of complaint, this respondent denies all and singular the averments therein contained, except that it admits that the said Edward H. R. Green was not domiciled in the Commonwealth of Massachusetts, or the State of Florida at the time of his death.

17. Answering Paragraph numbered 25 of the bill of complaint, this respondent admits all and singular the averments therein contained except that it denies that the State of Texas is in any wise entitled to any transfer, succession, inheritance or estate tax upon any part of the estate of the said Edward H. R. Green, except real property and tangible personal property situated in the State of Texas, and further denies that the State of Texas has any lien upon any part of the estate of the said Edward H. R. Green except real property and tangible personal property situated in the State of Texas.

18. Answering Paragraph numbered 27 of the bill of complaint, this respondent admits all and singular the averments therein contained, except that it is without knowledge or information as to whether the State of New York will appear in any proceeding yet to be instituted, and is without knowledge or information as to whether the State of Florida, the State of Texas or

the Commonwealth of Massachusetts will appear in any proceeding now pending or yet to be instituted.

19. Answering Paragraph numbered 31 of the bill of complaint, this respondent admits all and singular the averments therein contained except that it is without knowledge or information as to the amount of transfer, succession, inheritance or estate taxes claimed by the Commonwealth of Massachusetts or the State of Florida, and denies that the State of New York has instituted a so-called estate tax proceeding and further denies that the State of New York has claimed estate taxes in the amount set forth in paragraph numbered 16 of the bill of complaint.

20. Further answering the bill of complaint herein, this respondent denies that the said Edward H. R. Green at the time of his death on June 8, 1936, was domiciled in the State of Texas, or in the Commonwealth of Massachusetts, or in the State of Florida, or in any place other than the State of New York.

21. Further answering the bill of complaint herein, this respondent affirmatively alleges that Mabel Harlow Green as temporary administratrix appointed by the County Court of Kaufman County, State of Texas and as ancillary administratrix appointed by the County Judges' Court of Dade County, State of Florida, Thomas W. McDonald as temporary administrator appointed by the Surrogate's Court of Essex County, State of New York and Thomas Witter Chrystie as special administrator appointed by the Probate Court of Bristol County, Commonwealth of Massachusetts, each in their respective capacities, are proper parties to this controversy.

COUNTERCLAIM.

And for a counterclaim this respondent, the State of New York, re-avers all the matters alleged in the foregoing answer, and specifically alleges that the decedent, Edward H. R. Green, was at the time of his death and had been continuously for a long time prior thereto domiciled within the State of New York. That the estate of the said Edward H. R. Green is subject to taxation under the provisions of Article 10-C of the Tax Law of the State of New York.

The provisions of Article 10-C of the Tax Law of the State of New York are set forth in full in Appendix A hereto, and the respondent prays this Court to consider the applicable provisions of said Article and the existence and effect thereof as an allegation of this counterclaim as if set forth in full herein.

WHEREFORE, this respondent prays that this Court now take proof as to the domicile of said Edward H. R. Green and determine and adjudge whether the said Edward H. R. Green was domiciled at the time of his death in the State of Florida, or in the State of Texas, or in the Commonwealth of Massachusetts, or in the State of New York, and more particularly determine and adjudge that the said Edward H. R. Green was domiciled at the time of his death within the State of New York and not within the State of Texas or within the Commonwealth of Massachusetts, or within the State of Florida, and further determine and adjudge that this respondent, the State of New York, has exclusive jurisdiction to impose and collect an estate tax

upon the intangible personal property owned by the said Edward H. R. Green at the time of his death.

THE STATE OF NEW YORK,
Respondent.
JOHN J. BENNETT, JR., ***Attorney General***
By SETH T. COLE,
Special Assistant Attorney General.

JOHN J. BENNETT, JR.,
Attorney General,

SETH T. COLE,
Special Assistant Attorney General,

MORTIMER M. KASSELL,
Attorneys for Respondent,
The State of New York.

Appendix A.

ARTICLE 10-C

§ 249-m. *Definitions.* When used in this article:

(a) The term "executor" means the executor of the will or administrator of the estate of the decedent, or, if there be no such executor or administrator appointed, qualified and acting, then any person in actual or constructive possession of any property included in the gross estate of the decedent;

(b) The term "gross estate" means the gross estate as determined under the provisions of section two hundred and forty-nine-r hereof;

(c) The term "net estate" means the net estate as determined under the provisions of section two hundred and forty-nine-s hereof;

(d) The term "month" means calendar month;

(e) The term "person" includes an individual, a trustee, a corporation, an association, a joint-stock company, a copartnership and a bank;

(f) The term "tangible personal property" means corporeal personal property, including money, and the term "intangible personal property" means incorporeal personal property, including deposits in banks, mortgages, debts, receivables, shares of stock, bonds, notes, credits, evidences of an interest in property, evidences of debt and choses in action generally;

(g) The term "persons interested in the estate" shall include all persons who may be entitled to receive or who have received any property or interest which is required to be included in the gross estate of a decedent, or any benefit whatsoever with respect to any such property or interest, whether under a will, or intestacy, or by reason of any of the transfers, trusts, estates, interests, rights, powers and relinquishment of powers as severally enumerated and described in section two hundred forty-nine-r of this article.

§ 249-n. *Tax on estates of resident decedents.* A tax equal to the sum of the following percentages of the

value of the net estate is hereby imposed upon the transfer of the net estate of every person dying on or after the effective date of this article who, at the time of death was a resident of this state, but net estates which, after deducting the applicable exemptions under section two hundred forty-nine-q of this article, do not exceed two thousand dollars shall not be taxable:

Four-fifths of one per centum of the amount of the net estate not in excess of one hundred fifty thousand dollars, except so much thereof as may be exempted from tax under the provisions of section two hundred forty-nine-q hereof:

One and three-fifths per centum of the amount by which the net estate exceeds one hundred fifty thousand dollars and does not exceed two hundred thousand dollars;

Two and two-fifths per centum of the amount by which the net estate exceeds two hundred thousand dollars and does not exceed three hundred thousand dollars;

Three and one-fifth per centum of the amount by which the net estate exceeds three hundred thousand dollars and does not exceed five hundred thousand dollars;

Four per centum of the amount by which the net estate exceeds five hundred thousand dollars and does not exceed seven hundred thousand dollars;

Four and four-fifths per centum of the amount by which the net estate exceeds seven hundred thousand dollars and does not exceed nine hundred thousand dollars;

Five and three-fifths per centum of the amount by which the net estate exceeds nine hundred thousand dollars and does not exceed one million one hundred thousand dollars;

Six and two-fifths per centum of the amount by which the net estate exceeds one million one hundred thousand dollars and does not exceed one million six hundred thousand dollars;

Seven and one-fifth per centum of the amount by which the net estate exceeds one million six hundred

thousand dollars and does not exceed two million one hundred thousand dollars;

Eight per centum of the amount by which the net estate exceeds two million one hundred thousand dollars and does not exceed two million six hundred thousand dollars;

Eight and four-fifths per centum of the amount by which the net estate exceeds two million six hundred thousand dollars and does not exceed three million one hundred thousand dollars;

Nine and three-fifths per centum of the amount by which the net estate exceeds three million one hundred thousand dollars and does not exceed three million six hundred thousand dollars;

Ten and two-fifths per centum of the amount by which the net estate exceeds three million six hundred thousand dollars and does not exceed four million one hundred thousand dollars;

Eleven and one-fifth per centum of the amount by which the net estate exceeds four million one hundred thousand dollars and does not exceed five million one hundred thousand dollars;

Twelve per centum of the amount by which the net estate exceeds five million one hundred thousand dollars and does not exceed six million one hundred thousand dollars;

Twelve and four-fifths per centum of the amount by which the net estate exceeds six million one hundred thousand dollars and does not exceed seven million one hundred thousand dollars;

Thirteen and three-fifths per centum of the amount by which the net estate exceeds seven million one hundred thousand dollars and does not exceed eight million one hundred thousand dollars;

Fourteen and two-fifths per centum of the amount by which the net estate exceeds eight million one hundred thousand dollars and does not exceed nine million one hundred thousand dollars;

Fifteen and one-fifth per centum of the amount by which the net estate exceeds nine million one hundred thousand dollars and does not exceed ten million one hundred thousand dollars;

Sixteen per centum of the amount by which the net estate exceeds ten million one hundred thousand dollars.

(*Temporary schedule of taxes below applicable to estates of persons dying between April 22, 1933 and July 1, 1937.*)

Notwithstanding any of the foregoing provisions of this section and in lieu of the tax hereinbefore provided, there shall be and is hereby imposed upon the transfer of the net estate of every person dying on or after the date on which this paragraph becomes effective and prior to the first day of July, nineteen hundred thirty-seven, who at the time of death was a resident of this state, a tax equal to the sum of the following percentages of the value of the net estate, but net estates which, after deducting the applicable exemptions under section two hundred forty-nine-q of this article, do not exceed two thousand dollars shall not be taxable:

One per centum of the amount of the net estate not in excess of one hundred fifty thousand dollars, except so much thereof as may be exempted from tax under the provisions of section two hundred forty-nine-q hereof;

Two per centum of the amount by which the net estate exceeds one hundred fifty thousand dollars and does not exceed two hundred thousand dollars;

Three per centum of the amount by which the net estate exceeds two hundred thousand dollars and does not exceed three hundred thousand dollars;

Four per centum of the amount by which the net estate exceeds three hundred thousand dollars and does not exceed five hundred thousand dollars;

Five per centum of the amount by which the net estate exceeds five hundred thousand dollars and does not exceed seven hundred thousand dollars;

Six per centum of the amount by which the net estate exceeds seven hundred thousand dollars and does not exceed nine hundred thousand dollars;

Seven per centum of the amount by which the net estate exceeds nine hundred thousand dollars and does not exceed one million one hundred thousand dollars;

Eight per centum of the amount by which the net estate exceeds one million one hundred thousand dollars and does not exceed one million six hundred thousand dollars;

Nine per centum of the amount by which the net estate exceeds one million six hundred thousand dollars and does not exceed two million one hundred thousand dollars;

Ten per centum of the amount by which the net estate exceeds two million one hundred thousand dollars and does not exceed two million six hundred thousand dollars;

Eleven per centum of the amount by which the net estate exceeds two million six hundred thousand dollars and does not exceed three million one hundred thousand dollars;

Twelve per centum of the amount by which the net estate exceeds three million one hundred thousand dollars and does not exceed three million six hundred thousand dollars;

Thirteen per centum of the amount by which the net estate exceeds three million six hundred thousand dollars and does not exceed four million one hundred thousand dollars;

Fourteen per centum of the amount by which the net estate exceeds four million one hundred thousand dollars and does not exceed five million one hundred thousand dollars;

Fifteen per centum of the amount by which the net estate exceeds five million one hundred thousand dollars and does not exceed six million one hundred thousand dollars;

Sixteen per centum of the amount by which the net estate exceeds six million one hundred thousand dollars and does not exceed seven million one hundred thousand dollars;

Seventeen per centum of the amount by which the net estate exceeds seven million one hundred thousand dollars and does not exceed eight million one hundred thousand dollars;

Eighteen per centum of the amount by which the net estate exceeds eight million one hundred thousand dollars and does not exceed nine million one hundred thousand dollars;

Nineteen per centum of the amount by which the net estate exceeds nine million one hundred thousand dollars and does not exceed ten million one hundred thousand dollars;

Twenty per centum of the amount by which the net estate exceeds ten million one hundred thousand dollars.

Notwithstanding any of the foregoing provisions of this section or any other provision of this article, there shall be imposed upon the transfer of the net estate of every person who at the time of death was a resident of this state, a tax equal to the maximum credit allowable to the estate of such decedent against the United States estate tax imposed with respect thereto, except that proper reduction of the amount of such tax shall be made on account of any real or tangible personal property forming a part of the gross estate of such decedent which is located outside of the state of New York; but the provisions of this paragraph shall in no event have the effect of reducing the tax otherwise imposed by this article.

The tax imposed by this section shall be paid by the executor, who shall thereupon charge the same against and collect it from the persons interested in the estate in order that it shall be proportionately borne by those who have received the benefit.

§ 249-o. *Credits against the tax.* The tax imposed by section two hundred forty-nine-n hereof shall be

credited with the amount of any constitutionally valid estate, inheritance, legacy or succession taxes actually paid to any state or territory of the United States (other than this state) or to the District of Columbia, in respect of any property included in the gross estate (not including any such taxes paid with respect to the estate of a person other than the decedent), but the amount to be so credited shall in no event exceed the amount of tax imposed by said section two hundred forty-nine-n in respect of the property on which the tax to be credited was imposed. For the purpose of this section the amount of tax imposed by said section two hundred forty-nine-n in respect of any particular item or items of property shall be deemed to be that proportion of the total tax imposed by said section two hundred forty-nine-n upon the entire net estate which the value of said item or items bears to the value of the entire gross estate. Where a tax has been paid to another state or territory of the United States or to the District of Columbia with respect to property included in the gross estate and other property, so as to make an apportionment necessary in determining the amount of credit hereunder, such tax shall be apportioned in the ratio that the value of the particular item or items of property included in the gross estate is to the gross value of the entire property on which such tax was imposed. Credit under this section shall only be allowed if such taxes are actually paid and claim for credit made within three years after the date of decedent's death, except that the tax commission may, for good cause shown, extend the period for payment of such taxes and for making such claim.

§ 249-p. *Tax on estates of nonresident decedents.* A tax is hereby imposed upon the transfer of so much of the net estate of every person dying on or after the effective date of this article, who, at the time of death, was a nonresident of this state, as consists of real property situated and tangible personal property having an actual situs in this state. The amount of the tax on such real and tangible personal property shall be determined as follows:

Ascertain the amount of tax which would be payable under this article if the decedent had died a resident

of this state with all his property (except real property situated and tangible personal property having an actual situs outside this state) situated or located within this state, and multiply the net tax so ascertained by a fraction the denominator of which shall be the value of the gross estate as ascertained for the purpose of computing such tax and the numerator of which shall be the said gross estate value of the real property situated and the tangible personal property having an actual situs in this state. The product shall be the amount of tax payable to this state. No credit shall be allowed against the tax so determined.

The tax imposed by this section shall be paid by the executor, who shall thereupon charge the same against and collect it from the persons interested in the estate in order that it shall be proportionately borne by those who have received the benefit.

§ 249-q. *Exemptions.* The tax of four-fifths of one per centum of the amount of the net estate not in excess of one hundred and fifty thousand dollars imposed by section two hundred and forty-nine-n of this article shall not be payable with respect to

a. The amount of the net estate not exceeding twenty thousand dollars transferred to a husband or wife;

b. The amount of the net estate, not exceeding five thousand dollars in each instance, transferred to a lineal ancestor or descendant, adopted child, stepchild, or lineal descendant of an adopted child or stepchild, or to a brother or sister, or to the wife or widow of a son, or to the husband or a widower of a daughter, or to any child to whom the decedent for not less than ten years prior to such transfer stood in the mutually acknowledged relation of a parent, provided, however, such relationship began at or before the child's fifteenth birthday and was continuous for said ten years thereafter.

c. So much of the amount required to be included in the gross estate under the provisions of paragraph numbered nine of section two hundred forty-nine-r of this chapter as does not exceed one hundred thousand dollars less the aggregate of any exemptions otherwise allowable under this section.

§ 249-r. *Gross estate.* The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated (except real property situated and tangible personal property having an actual situs outside this state):

1. To the extent of the interest therein of the decedent at the time of his death;

2. To the extent of any interest therein of the surviving spouse, existing at the time of the decedent's death, as dower, curtesy or by virtue of a statute creating an estate in lieu of dower or curtesy;

3. To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, in contemplation of or intended to take effect in possession or enjoyment at or after his death, or of which he has at any time made a transfer, by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (a) the possession or enjoyment of, or the right to the income from, the property or (b) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom; except in case of a bona fide sale for an adequate and full consideration in money or money's worth. Any transfer of a material part of his property made by the decedent within two years prior to his death, without such consideration, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this article;

4. To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power, either by the decedent alone or in conjunction with any person, to alter, amend, or revoke, or where the decedent relinquished any such power in contemplation of his death, except in case of a bona fide sale for an adequate and full consideration in money or money's worth. For the purposes of this

paragraph the power to alter, amend, or revoke shall be considered to exist on the date of the decedent's death even though the exercise of the power is subject to a precedent giving of notice or even though the alteration, amendment, or revocation takes effect only on the expiration of a stated period after the exercise of the power, whether or not on or before the date of the decedent's death notice has been given or the power has been exercised. In such cases proper adjustment shall be made representing the interests which would have been excluded from the power if the decedent had lived, and for such purpose if the notice has not been given or the power has not been exercised on or before the date of his death, such notice shall be considered to have been given, or the power exercised, on the date of his death. The relinquishment of any such power, not admitted or shown to have been in contemplation of the decedent's death, made within two years prior to his death without such a consideration and affecting the interest or interests (whether arising from one or more transfers or the creation of one or more trusts) of any one beneficiary of a value or aggregate value, at the time of such death, in excess of five thousand dollars, then, to the extent of such excess, such relinquishment or relinquishments shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this article;

5. To the extent of the interest therein held as joint tenants by the decedent and any other person, or as tenants by the entirety by the decedent and spouse, or deposited, with any person carrying on the banking business, in their joint names and payable to either or the survivor except such part thereof as may be shown to have originally belonged to such other person and never to have been received or acquired by the latter from the decedent for less than an adequate and full consideration in money or money's worth; provided, that where such property or any part thereof, or part of the consideration with which such property was acquired, is shown to have been at any time acquired by such other person from the decedent for less than an adequate and full consideration in money or money's worth, there shall be excepted only such part of the

value of such property as is proportionate to the consideration furnished by such other person; provided, further, that where any property has been acquired by gift, bequest, devise, or inheritance, as a tenancy by the entirety by the decedent and spouse, then to the extent of one-half of the value thereof, or, where so acquired by the decedent and any other person as joint tenants, and their interests are not otherwise specified or fixed by law, then to the extent of the value of a fractional part to be determined by dividing the value of the property by the number of joint tenants;

6. To the extent of any personal property belonging to a husband which passes to his widow by virtue of her survivorship because of the husband having placed such property in his and his wife's names with intent to create a right of survivorship in her;

7. To the extent of any property passing under a general power of appointment exercised by the decedent (a) by will, or (b) by deed executed in contemplation of, or intended to take effect in possession or enjoyment at or after, his death, or (c) by deed under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (1) the possession or enjoyment of, or the right to the income from, the property, or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom; except in case of a *bona fide* sale for an adequate and full consideration in money or money's worth;

7-a. To the extent of any property passing under a power of appointment exercised by the decedent (a) by will, or (b) by deed executed in contemplation of, or intended to take effect in possession or enjoyment at or after, his death, except in case of a *bona fide* sale for an adequate and full consideration in money or money's worth, exclusive of property the value of which is required to be included in the gross estate pursuant to paragraph numbered seven of this section, and provided that the transfer of such property is not or was not subject to a death tax in the estate of the grantor

of such power but would have been so taxable except for a statute providing that the tax on the transfer of such property should be imposed in the estate of the grantee of such power in the event of the exercise thereof.

8. To the extent of the amount receivable by the executor as insurance under policies taken out by the decedent upon his own life;

9. To the extent of the amount receivable by all other beneficiaries as insurance under policies taken out by the decedent upon his own life, but only to the extent that such amount is required to be included in the gross estate under the provisions for the taxing of estates contained in any revenue act of the United States applicable to the estate of the decedent;

10. Subdivisions two, three, four, five, six, seven, eight and nine of this section shall apply to the transfers, trusts, estates, interests, rights, powers, and relinquishment of powers, as severally enumerated and described therein, whether made, created, arising, existing, exercised, or relinquished before or after the enactment of this article;

11. If any one of the transfers, trusts, interests, rights, or powers enumerated and described in subdivisions three, four and seven of this section is made, created, exercised, or relinquished for a consideration in money or money's worth, but is not a *bona fide* sale for an adequate and full consideration in money or money's worth, there shall be included in the gross estate only the excess of the fair market value at the time of death of the property otherwise to be included on account of such transaction, over the value of the consideration received therefor by the decedent.

12. For the purposes of this article, a relinquishment or promised relinquishment of dower, curtesy or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the decedent's property or estate, shall not be considerd to any extent a consideration "in money or money's worth."

§*249-s. Net estate.* For the purpose of the tax the value of the net estate shall be determined by deducting from the value of the gross estate:

1. Such amounts (a) for funeral expenses, (b) for administration expenses, (c) for claims against the estate, (d) for unpaid mortgages upon, or any indebtedness in respect to, property where the value of decedent's interest therein, undiminished by such mortgage or indebtedness, is included in the value of the gross estate, and (e) reasonably required and actually expended for the support during the settlement of the estate of those dependent upon the decedent, as are allowed by the laws of this state, but not including any income taxes upon income received after the death of the decedent, or property taxes not accrued before his death, or any estate, succession, legacy or inheritance taxes, but such taxes (other than income and property taxes) shall be allowed as a credit in the manner provided by section two hundred forty-nine-o of this article. The deduction herein allowed in the case of claims against the estate, unpaid mortgages, or any indebtedness shall when founded upon a promise or agreement, be limited to the extent that they were contracted *bona fide* and for an adequate and full consideration in money or money's worth. There shall also be deducted losses incurred during the settlement of estates arising from fires, storms, shipwrecks, or other casualties, or from theft, when such losses are not compensated for by insurance or otherwise, and if at the time of the filing of the return such losses have not been claimed as a deduction for income tax purposes in an income tax return; but if such losses are allowable as a deduction under this section they shall not be allowed as a deduction under the provisions of section three hundred sixty of this chapter. Deductions on account of commissions or allowances to executors shall not exceed the amount of such commissions or allowances as prescribed by law;

2. An amount equal to the value of any property (a) forming a part of the gross estate situated in the United States of any person who died within five years prior to the death of the decedent, or (b) transferred to the decedent by gift within five years prior to his death, where such property can be identified as having been received by the decedent from the donor by gift, or from such prior decedent by gift, bequest, devise or inheritance, or which can be identified as having

been acquired in exchange for property so received. This deduction shall be allowed only where a gift tax imposed under the United States revenue act of nineteen hundred thirty-two or an estate tax imposed under the United States revenue act of nineteen hundred twenty-six or any prior act of congress of the United States, was finally determined and paid by or on behalf of such donor, or the estate of such prior decedent, as the case may be, and only in the amount finally determined as the value of such property in determining the value of the gift for the purpose of such gift tax, or the gross estate of such prior decedent for the purpose of such estate tax, and only to the extent that the value of such property is included in the decedent's gross estate, and only if in determining the value of the net estate of the prior decedent no deduction was allowable under this paragraph in respect of the property or property given in exchange therefor. Where a deduction was allowed of any mortgage or other lien in determining such gift tax, or such estate tax of the prior decedent, which was paid in whole or in part prior to the decedent's death, then the deduction allowable under this paragraph shall be reduced by the amount so paid. The deduction allowable under this paragraph shall be reduced by an amount which bears the same ratio to the amounts allowed as deductions under paragraphs numbered one and three of this section, and paragraph numbered four of section three hundred three (a) of the United States revenue act of nineteen hundred twenty-six, as the amount otherwise deductible under this paragraph bears to the value of the decedent's gross estate. Where the property referred to in this paragraph consists of two or more items the aggregate value of such items shall be used for the purpose of computing the deduction.

3. The amount of all bequests, legacies, devises, or transfers, to or for the use of the United States, any state, territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes, or to or for the use of any corporation, wheresoever incorporated or located, organized and operated exclusively for religious, charitable, scientific, literary, patriotic, historical, bar association, or educational purposes, including the encouragement of art and the

prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, or to a trustee or trustees, or a fraternal society, order, or association operating under the lodge system, but only if such contributions or gifts are to be used by such trustee or trustees, or by such fraternal society, order, or association, exclusively for religious, charitable, scientific, literary, patriotic, historical, bar association, or educational purposes, or for the prevention of cruelty to children or animals. If the tax imposed by sections two hundred forty-nine-n or two hundred forty-nine-p of this article, or any estate, succession, legacy or inheritance taxes, are, either by the terms of the will or pursuant to any provision of law of this or any other jurisdiction, payable in whole or in part out of the bequests, legacies or devises otherwise deductible under this paragraph, then the amount deductible under this paragraph shall be the amount of such bequests, legacies or devises reduced by the amount of such taxes. The amount of the deduction under this paragraph for any transfer shall not exceed the value of the transferred property required to be included in the gross estate.

§ *249-t. Jurisdiction of the surrogate.* 1. The surrogate's court of every county of the state having jurisdiction to grant letters testamentary or of administration upon the estate of a decedent which estate is subject to tax under this article, or to appoint a trustee of such estate, or any part thereof, or to grant ancillary letters thereon, shall have jurisdiction to hear and determine all questions arising under the provisions of this article, including specifically, but without limitation, jurisdiction to finally determine the amount of the tax imposed by this article, and to fix and adjudge the proportions in which the same shall be borne by the persons interested in the estate as in section one hundred twenty-four of the decedent estate law provided, and to do any act authorized by law to be done by a surrogate in other matters or proceedings coming within his jurisdiction; and if two or more surrogates' courts shall be entitled to exercise any such

jurisdiction, the surrogate first acquiring jurisdiction hereunder shall retain the same to the exclusion of every other surrogate. Every petition for ancillary letters testamentary or of administration, and every petition for original letters testamentary or of administration in the estate of a decedent who at the time of his death was not domiciled in this state, shall set forth the tax commission as a party to be cited, and a true and correct statement of all the decedent's property in this state and the value thereof; and upon presentation thereof the surrogate shall issue a citation directed to the tax commission; and upon the return of the citation the surrogate may estimate the amount of the tax which may be or become due under the provisions of this article and his decree awarding the letters may contain any provision for the payment of such tax or the giving of security therefor which might be made by such surrogate if the tax commission were a creditor of the decedent.

2. Whenever the tax commission is cited on the issuance of original letters testamentary or of administration in the estate of a decedent not domiciled in this state, as in the preceding subdivision provided, it shall immediately notify the proper taxing authorities of the state in which such decedent was domiciled of the fact of the filing of the petition and of the decedent's property and the value thereof, as set forth in the petition. No executor or administrator of the estate of such a decedent to whom original letters have been issued pursuant to a petition filed subsequently to the time this subdivision takes effect shall be entitled to a final accounting or discharge unless he shall have filed with the surrogate proof that all death taxes, together with interest or penalties thereon, due to the state of domicile of such decedent, or to any political subdivision thereof, have been paid or secured, or a consent by the proper taxing authorities of the state of domicile to such final accounting or discharge. It shall be the duty of the tax commission to cooperate with the domiciliary taxing authorities and to furnish them with such information as may be requested with respect to any such estate. The official or body charged with the administration of the death tax laws of the

domiciliary state shall be deemed a party interested in such estate to the extent that he or it may petition for an accounting therein if the death taxes, interest and penalties due such domiciliary state, or a political subdivision thereof, are not paid or secured, and upon such petition the surrogate may decree such accounting and may decree the remission to a fiduciary appointed by the domiciliary probate court of so much of the personal property of such estate as may be necessary to insure the payment to the state of domicile, or political subdivision thereof, of the amount of death taxes, interest and penalties due to such state or political subdivision. The provisions of this subdivision shall apply to the estate of a decedent not domiciled in this state only if the laws of the state of his domicile contain a provision, of any nature or however expressed, whereby this state is given reasonable assurance of the collection of its death taxes, interest and penalties, from the estates of decedents dying domiciled in this state in cases where the estates of such decedents are being administered by the probate court of such other state by virtue of original letters testamentary or of administration, or if the state in which such decedent was domiciled does not grant letters testamentary or of administration in estates of non-residents until after letters have been issued by the state of domicile. The provisions of this subdivision shall be liberally construed in order to insure that the state of domicile of a decedent shall receive any death taxes, together with interest and penalties thereon, due to it from such decedent's estate. For the purposes of this subdivision the word "state" shall be construed to include only the states of the United States, any territory of the United States, the District of Columbia, and the Dominion of Canada or any province thereof.

3. When it is made to appear to a surrogate of any county in this state that a safe deposit company, trust company, bank, person or corporation has in its possession or under its control papers of a decedent of whose estate such court has jurisdiction or that the decedent had leased from such a corporation a safe deposit box, and that such papers or such safe deposit box may contain a will of the decedent, a deed to a burial plot in

which the decedent is to be interred or a policy of insurance issued in the name of the decedent and payable to a named beneficiary, he may make an order directing such safe deposit company, trust company, bank, person or corporation to permit a person named in the order to examine such papers or safe deposit box and to make an inventory of such papers or of the contents of such safe deposit box in the presence of a representative of the tax commission and an officer of such safe deposit company, trust company, bank or corporation, or agent of such person, and if a paper purporting to be a will of the decedent, the deed to a burial plot is found among such papers, or in such box, to deliver such will to the clerk of the surrogate's court of such county, or such deed to such person as may be designated in such order, or such policy of insurance to the beneficiary named therein. The clerk of said court shall furnish a receipt upon the delivery to him of the will.

§ 249-u. *Appointment of appraisers, stenographers and clerks.* There shall be a salaried appraiser for each of the counties of Albany, Bronx, Chautauqua, Dutchess, Erie, Kings, Nassau, New York, Niagara, Monroe, Oneida, Onondaga, Orange, Queens, Rensselaer, Richmond, Suffolk, and Westchester. The commissioner of taxation and finance shall appoint for each such county an appraiser, and such stenographers and other employees as may be needed for the proper administration of this article, and shall fix their salaries within the amounts appropriated for such purpose. Such commissioner may also designate one or more deputy appraisers for any of the aforementioned counties. Appraisal reports may be signed by the appraiser or deputy. The provisions of section nine of the public officers law shall apply to deputy appraisers appointed pursuant to this section. In each county in which the office of appraiser is not salaried the county treasurer shall act as appraiser.

§ 249-v. *Proceedings by appraiser; return by executor.* The surrogate, either upon his own motion, or upon the application of the tax commission, or of any person interested in the estate, shall by order direct

the appraiser for his county to fix the fair market value of property of estates subject to tax under this article. The surrogate may make an order directing the appraiser to so act with regard to any number of estates and cause the same to be filed in his office, and such order shall have the same force and effect in relation to each estate specified therein as if made solely with respect thereto.

Every such appraiser shall give notice by mail to the executor, the tax commission, all persons interested in the estate, and to such other persons as the surrogate may by order direct, of the time and place when he will appraise such property. He shall at such time and place appraise the same at its fair market value and for that purpose is authorized to issue subpoenas and to compel the attendance of witnesses before him and to take the evidence of such witnesses under oath concerning such property and the value thereof; and he shall make report thereof and of such value, in writing, to the said surrogate, together with the depositions of the witnesses examined, and such other facts in relation thereto and to said matter as the surrogate may order or require, including the return of the executor as hereinafter provided for and shall report the amount of the gross estate, together with the items thereof, the amount of deductions, with the items thereof, and the amount of the net estate.

The executor shall within sixty days after the entry of the order directing the appraisal file with the appraiser a return under oath containing such information as may be necessary for the purpose of appraising the estate. The time within which such return is to be filed may be extended by the appraiser for good cause shown. It may be required that such return be made in triplicate and the executor shall also be required to furnish such supplemental returns or additional data as may be necessary. If the executor is unable to make a complete return as to any part of the gross estate of the decedent he shall include in his return a description of such part and the name of every person holding a legal or beneficial interest therein, and upon notice from the appraiser such person shall in like

manner make a return as to such part of the gross estate. Failure to make any return as herein provided shall subject the executor or other person required to make the same to a penalty of one thousand dollars, to be recovered in an action brought by the tax commission, and if such failure be with intent to evade the tax, the executor or such other person shall be guilty of a misdemeanor; provided, however, that upon the return being filed the surrogate in his discretion may waive the penalty in any case where there was no intent to evade the tax. In case of failure to file a return the surrogate or appraiser may determine the value of the property of the estate which is subject to tax on the basis of the best information available, subject to correction from time to time, if it appears that a further tax is due.

The value of every future or limited estate, income, interest or annuity for any life or lives in being, or in any way dependent upon any life or lives in being, whether vested or contingent, shall be determined by the rule, method and standard of mortality and value employed by the superintendent of insurance in ascertaining the value of annuities for the determination of liabilities of life insurance companies and according to the actuaries' or combined experience table of mortality, as extended, except that the rate of interest for making such computation shall be four per centum per annum compounded annually, and the superintendent of insurance shall, on the application of the surrogate or appraiser, make such determination and certify the same to the surrogate or appraiser, and his certificate shall be conclusive evidence that the method of computation adopted therein is correct.

Every appraiser shall be paid his actual and necessary traveling expenses and the fees paid to witnesses, which fees shall be the same as those now paid to witnesses subpoenaed to attend in courts of record, payment to be made out of moneys appropriated for such purpose.

The report of the appraiser shall be made in duplicate and shall be simultaneously filed in the office of the surrogate and tax commission.

§ 249-w. *Determination of surrogate.* From such report of appraisal and other proof relating to any such estate before the surrogate, the surrogate shall forthwith, as of course, determine the value of such estate and the amount of tax to which the same is liable; or the surrogate may so determine the value of any such estate and the amount of tax to which the same is liable, without appointing an appraiser. Such determination may be made without regard to the provisions of the next to last paragraph of section two hundred forty-nine-n of this article if the final determination of the United States estate tax has not been made, but if it shall appear by such final determination, when made, that an additional tax is imposable because of the provisions of such paragraph, the surrogate shall make a supplemental determination of the amount of such additional tax. It shall be the duty of the executor of every estate which is subject to the United States estate tax to file with the tax commission a copy of the final determination thereof forthwith after the same is made. At the time of making any such determination, or thereafter in an accounting or other appropriate proceedings, the surrogate may fix and adjudge the proportions in which the tax shall be borne by the persons interested in the estate as in section one hundred and twenty-four of the decedent estate law provided.

The surrogate shall immediately give notice, upon the determination by him as to the value of any estate which is taxable under this article, and of the tax to which it is liable, and as to the proportions in which the tax shall be borne by persons interested in the estate if that be determined at the same time, to the executor and to all persons interested in the estate, and shall immediately forward a copy of such taxing order to the tax commission. If the proportions in which the tax shall be borne are to be determined in another proceeding citations therein shall be issued to all persons interested in the estate. The surrogate shall also forward to the tax commission copies of all orders entered by him in relation to or affecting in any way the tax on any estate, including orders of exemption.

If, however, it appear at any stage of the proceedings that any of such persons known to be interested in the estate is an infant or an incompetent, the surrogate may, if the interest of such infant or incompetent is presently involved and is adverse to that of any of the other persons interested therein, appoint a special guardian of such infant; but nothing in this provision shall affect the right of an infant over fourteen years of age or of any one on behalf of an infant under fourteen years of age to nominate and apply for the appointment of a special guardian for such infant at any stage of the proceedings.

§ *249-x. Appeal and other proceedings.* The tax commission, executor or any person interested in the estate if dissatisfied with the appraisement or assessment and determination of tax, or with the fixation and adjudgment of the proportions in which the tax shall be borne, if that be determined at the same time, may appeal therefrom to the surrogate within sixty days from the fixing, assessing and determination of tax by the surrogate as herein provided, upon filing in the office of the surrogate a written notice of appeal, which shall state the grounds upon which the appeal is taken; such appeal may be taken at any time on the ground that the return of the executor was false or fraudulent or did not include all of the property of the estate; no costs shall be allowed by the surrogate on such appeal. In proceedings to which the tax commission is cited as a party under sections two hundred and forty-nine-t and two hundred and forty-nine-v of this chapter, it is authorized to designate and retain counsel to represent it and to pay the expenses thereby incurred out of money appropriated for such purpose.

Within two years after the entry of an order or decree of a surrogate determining the value of an estate and assessing the tax thereon, the tax commission may, if it believes that such appraisal, assessment or determination has been fraudulently, collusively or erroneously made, make application to a justice of the supreme court of the judicial district embracing the surrogate's court in which the order or decree has been filed, for a reappraisal thereof. The justice to whom such application is made may thereupon appoint

a competent person to reappraise such estate. Such appraiser shall possess the powers and be subject to the duties of an appraiser under section two hundred and forty-nine-v of this article and shall receive compensation at the rate of ten dollars per day for every day actually and necessarily employed in such appraisal. Such compensation shall be payable by the tax commission out of moneys appropriated for such purpose, upon the certificate of the justice appointing him. The report of such appraiser shall be filed with the justice by whom he was appointed, and thereafter the same proceedings shall be taken and had by and before such justice as are herein provided to be taken and had by and before the surrogate. The determination and assessment of such justice shall supersede the determination and assessment of the surrogate, and shall be filed by such justice in the office of the tax commission, and a certified copy thereof transmitted to the surrogate's court of the proper county.

§ *249-y. Vacancy in office of appraiser; proceedings continued by successor.* In case an appraiser is appointed pursuant to section two hundred forty-nine-u of this article to succeed another appraiser, such successor shall continue and complete all proceedings pending before his predecessor, and without the making by the surrogate of orders in such proceedings designating him so to act, with the same force and effect as if such proceedings had been continued and completed by such predecessor, and such successor shall be deemed to have been substituted for his predecessor in each such proceeding.

§ *249-z. When tax due; discount and interest.* 1. The tax imposed by this article shall be due and payable at the time of the decedent's death and shall be paid by the executor, subject to being by him charged against and collected from the persons interested in the estate, to the tax commission in a county in which the office of appraiser is salaried, and in other counties, to the county treasurer, and said tax commission or county treasurer shall furnish duplicate receipts therefor. If the tax has not been assessed, a temporary payment may be made by the executor for the purpose of obtaining the discount herein provided for

or of avoiding interest. If the tax is paid within six months from date of death of the decedent a discount of five per centum shall be allowed and deducted therefrom. If the tax is not paid within such six months, such discount rate shall be reduced by subtracting one-half of one per centum each month after the expiration of such six months, until such discount is exhausted. If the tax is not paid within eighteen months from the date of death of the decedent interest shall be charged and collected thereon at the rate of ten per centum per annum from the date of the decedent's death, except that if the total tax imposed upon an estate by this article exceeds five per centum of the net estate the tax commission shall, and may in other cases where it finds that the payment within eighteen months from the due date of any part of the amount of the tax would impose undue hardship upon the estate, extend the time for payment for such period as it may deem reasonable, but not to exceed four years from the due date, and may require payment to be made in annual instalments. If the time for payment is extended, that portion of the tax as to which an extension is granted shall bear interest at the rate of six per centum per annum after the expiration of eighteen months from the due date to the expiration of the period of extension, which interest shall be paid by the executor in addition to the tax, but if payment is not made within the period of extension interest shall be charged and collected at the rate of ten per centum per annum from the date of death of the decedent until the tax is paid. If an extension is granted, the tax commission may require the executor to furnish a bond in such amount, not exceeding double the amount in respect of which the extension is granted, and with such sureties as the tax commission deems necessary, conditioned upon the payment of the amount in respect of which the extension is granted in accordance with the terms of the extension. In case the time of payment has not been extended by the tax commission and the tax or any portion thereof is subject to interest at the rate of ten per centum per annum, such interest may be reduced by the surrogate to six per centum per annum, if by reason of claims made upon the estate, necessary litigation or other unavoidable cause of delay

Where it appears that a tax was paid before the entry of a taxing order and such order shows that the amount of tax due is less than the amount so paid, the tax commission, with the approval of the comptroller, shall refund to the persons entitled thereto the amount so paid in excess of the amount of tax fixed by the taxing order, out of funds in the custody of the comptroller to the credit of such taxes, provided application for such refund be filed with the tax commission within one year from the entry of such taxing order.

§ *249-bb. Lien of tax; warrant for collection.* Every such tax shall be and remain a lien upon the property transferred until paid, except that the tax commission shall have power to release the lien hereby imposed with respect to all or any part of such property, if it be satisfied that the collection of the tax will not thereby be jeopardized, and the executor of every estate shall be personally liable for such tax until its payment. Every executor shall have full power to sell so much of the property of the estate as will enable him to pay such tax in the same manner as he might be entitled by law to do for the payment of the debts of the estate.

If (a) except in the case of a bona fide sale for an adequate and full consideration in money or money's worth, the decedent makes a transfer, by trust or otherwise, of any property in contemplation of or intended to take effect in possession or enjoyment at or after his death, or makes a transfer, by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (1) the possession or enjoyment of, or the right to the income from, the property, or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom, or (b) if insurance passes under a contract executed by the decedent in favor of a specific beneficiary, and if in either case the tax in respect thereto is not paid when due, then the transferee, trustee, or beneficiary shall be personally liable for such tax, and such property, to the extent of

the decedent's interest therein at the time of such transfer, or to the extent of such beneficiary's interest under such contract of insurance, shall be subject to a lien equal to the amount of such tax which shall continue until the tax is paid. Any part of such property sold by such transferee or trustee to a bona fide purchaser for an adequate and full consideration in money or money's worth shall be divested of the lien and a like lien shall then attach to all the property of such transferee or trustee, except any part sold to a bona fide purchaser for an adequate and full consideration in money or money's worth.

The tax commission shall have power to enforce the liens hereby created by action, may maintain an action against the executor personally to recover the tax, or if the tax is not paid within eighteen months after the decedent's death, or within any period of extension, if an extension be granted, the tax commission may issue a warrant under its official seal, directed to the sheriff of any county, commanding him to levy upon and sell any or all of the real and personal property on which the tax is a lien found within his county for the payment of the amount of such tax with interest as provided in this article, and the cost of executing the warrant, and to return such warrant to the tax commission and pay to it the money collected by virtue thereof by a time to be therein specified, not later than sixty days from the date of the warrant. The sheriff to whom any such warrant shall be directed shall proceed upon the same in all respects with like effect and in the same manner as prescribed by law in respect to executions issued against property upon judgments of courts of record, and shall be entitled to the same fees for his services in executing the warrant to be collected in the same manner. In the discretion of the tax commission a warrant of like terms, force and effect may be issued and directed to any of its employees designated for that purpose and in the execution thereof such employees shall have all the powers conferred by law upon sheriffs but shall be entitled to no fees or compensation in excess of actual expense paid in the performance of such duty. If a warrant be returned not satisfied in full, the tax commission shall

have the same remedies to enforce the claim for taxes against the executor as if the people of the state had recovered judgment against the executor for the amount of the tax. In case any tax recovered by the tax commission pursuant to this subdivision was payable to a county treasurer, it shall pay to such county treasurer the amount of such recovery.

Any interested person may apply to the tax commission for a release of the lien of the tax with respect to any parcel of real property. If such application be granted, the tax commission, upon the payment to it of the sum of two dollars, shall execute a release of the lien of the tax, and such release may be recorded in the office of the recording officer of the county where the real property described therein is situated, in the book specified in subdivision three of section two hundred and forty-nine-z of this article.

§ 249-cc. *Liability of certain corporations to tax.* No safe desposit company, trust company, corporation, bank or other institution, person or persons having in possession or under control securities, deposits, or other assets belonging to or standing in the name of a decedent who was a resident or non-resident, or belonging to or standing in the joint names of such a decedent and one or more persons, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer herein provided, shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent, or to the survivor or survivors when held in the joint names of a decedent and one or more persons, or upon their order or request, unless notice of the time and place of such intended delivery or transfer be served upon the tax commission at least ten days prior to said delivery or transfer; nor shall any such safe deposit company, trust company, corporation bank or other institution, person or persons deliver or transfer any securities, deposits or other assets belonging to or standing in the name of a decedent, or belonging to, or standing in the joint names of a decedent and one or more persons, including the

shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, without retaining a sufficient portion or amount thereof to pay any tax and interest which may thereafter be assessed under the provisions of this article on account of the delivery or transfer of such securities, deposits or other assets, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, under the provisions of this article, unless the tax commission consents thereto in writing. And it shall be lawful for the tax commission or its representative to examine said securities, deposits or assets at the time of such delivery or transfer. Failure to serve such notice or failure to allow such examination or failure to retain a sufficient portion or amount to pay such tax and interest as herein provided shall render said safe deposit company, trust company, corporation, bank or other institution, person or persons liable to the payment of the amount of the tax and interest due or thereafter to become due upon said securities, deposits or other assets, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, and in addition thereto a penalty of not less than five thousand or more than twenty-five thousand dollars; and the payment of such tax and interest thereon, or of the penalty above prescribed, or both, may be enforced in an action brought by the tax commission in any court of competent jurisdiction. Notwithstanding any of the provisions of this section any life insurance company may pay the proceeds of any policy upon the life of a decedent to the persons entitled thereto as soon as it shall have mailed to the tax commission a notice, in such form as the tax commission may prescribe, setting forth the fact of such payment, but if such notice be not mailed all of the provisions of this section shall apply. The prohibitions of this section concerning the delivery or transfer of property shall in case of a non-resident decedent apply only

to tangible personal property having an actual situs in this state.

§ 249-dd. *Surrogate's assistants in New York, Kings and other counties.* The commissioner of taxation and finance may, upon the recommendation of the surrogate, appoint and may at pleasure remove, assistants and clerks in the surrogate's offices of the following counties, and shall fix their salaries within the amounts appropriated for that purpose:

1. In New York county, a transfer and estate tax assistant; a deputy transfer and estate tax assistant; a transfer and estate tax clerk; an assistant clerk; a recording clerk; a stenographer; and shall be entitled to expend not more than seven hundred and fifty dollars a year in such office for the expenses necessarily incurred in the assessment and collection of taxes under this article and article ten of this chapter.

2. In Kings county, a transfer and estate tax assistant; a deputy transfer and estate tax assistant; two transfer and estate tax clerks; and shall be entitled to expend not more than five hundred dollars a year for expenses necessarily incurred in the assessment and collection of taxes under this article and article ten of this chapter.

3. In Erie county a transfer and estate tax clerk.

4. In Westchester county, a transfer and estate tax assistant.

5. In Albany county, a transfer and estate tax clerk.

6. In Queens county, a transfer and estate tax clerk.

7. In Onondaga county, a transfer and estate tax clerk; and shall be entitled to expend not more than two hundred dollars a year for expenses necessarily incurred in the assessment and collection of taxes under this article and article ten of this chapter.

8. In Monroe county, a transfer and estate tax clerk; and shall be entitled to expend not more than three hundred dollars a year for expenses necessarily incurred in the assessment and collection of taxes under this article and article ten of this chapter.

9. In Dutchess county, a transfer and estate tax clerk.

10. In Oneida county, a transfer and estate tax clerk.

11. In Suffolk county, a transfer and estate tax clerk.

12. In Ulster county, a transfer and estate tax clerk.

13. In Richmond county, a transfer and estate tax clerk.

14. In Nassau county, a transfer and estate tax clerk.

15. In Bronx county, a transfer and estate tax assistant.

16. In Orange county, a transfer and estate tax clerk.

17. In each county of the state having a population of over one million, and in each county of the state having a population of over three hundred thousand inhabitants, included in or adjoining a city containing a population of over one million inhabitants, the surrogate or surrogates shall each annually receive for compensation for ministerial services rendered in connection with the administration of transfer and estate taxes the sum of four thousand dollars in addition to the salary or compensation paid to such surrogate by the county, but such salary and compensation shall not together exceed the entire salary and compensation paid to a justice of the supreme court in the judicial district in which the county is included. The additional compensation provided for by this subdivision shall be payable in the same manner as salaries and expenses under this section.

18. In each county of the state the surrogate shall receive annually for such services rendered in connection with the administration of transfer and estate taxes as are ministerial only and not incident to holding courts or performing duties as a judicial officer the respective sums following:

a. In any such county having a population of less than ten thousand, one hundred dollars;

b. In any such county having a population of ten thousand or more but less than fifty thousand, five hundred dollars;

c. In any such county having a population of fifty thousand or more but less than one hundred thousand, six hundred dollars;

d. In any such county having a population of one hundred thousand or more but less than two hundred thousand, nine hundred dollars;

e. In any such county having a population of two hundred thousand or more but less than five hundred thousand, twelve hundred dollars;

f. In any such county having a population of five hundred thousand or more, twenty-five hundred dollars.

No provision of this subdivision shall repeal or affect the provisions of subdivision seventeen of this section, but the provisions of this subdivision shall apply to the surrogate or surrogates mentioned in said subdivision seventeen of this section, provided that any payment or payments made to him or them, whether under this subdivision or subdivision seventeen, or both, shall not in all exceed the sum of four thousand dollars annually. Such sum shall not, however, in addition to the salary or compensation paid to any surrogate by the county, together exceed the entire salary and compensation paid to a justice of the supreme court in the judicial district in which the county is included.

The moneys provided to be paid for services by this subdivision shall be payable in the same manner as salaries and expenses under this section. Such salaries and expenses shall be paid upon proper vouchers, out of moneys appropriated for such purpose.

§ 249-ee. *Receipts for taxes.* The receipts issued for the payment to the tax commission of any tax under this article shall be signed and sealed by the tax commission and, if issued by any county treasurer, countersigned by the tax commission. Upon countersigning the receipt, the tax commission shall charge the county

treasurer receiving the tax with the amount thereof and affix the seal of its office to the same and return to the proper person.

§ 249-ff. *Fees of county treasurer.* The treasurer of each county in which the office of appraiser is not salaried shall be allowed to retain, on all taxes collected by him each fiscal year under this article, ten per centum on the first twenty-five thousand dollars, two and one-half per centum on the next fifty thousand dollars, and one per centum on all additional sums. Such fees shall be in addition to the salaries and fees now allowed by law to such officers, but the aggregate amount thereof in any county for the period from January first to June thirtieth, inclusive, nineteen hundred thirty-two, shall not exceed the sum of two thousand five hundred dollars and thereafter shall not exceed the sum of five thousand dollars in any fiscal year.

§ *249-gg. Books and forms to be furnished by the tax commission.* The tax commission shall furnish to each surrogate a book, which shall be a public record, and in which he shall enter the name of every decedent upon whose estate an application to him has been made for the issue of letters of administration, or letters testamentary, or ancillary letters, the date and place of death of such decedent, and the estimated value of his real and personal property. These entries shall be made from the data contained in the papers filed on any such application, or in any proceeding relating to the estate of the decedent. The surrogate shall also enter in such book the amount of the personal property of any such decedent, as shown by the inventory thereof when made and filed in his office, and the returns made by any appraiser appointed by him under this article, and the value of any other property of any such decedent or given by him in his will or otherwise, as fixed by the surrogate, and the tax assessed thereon, and the amounts of any receipts for payment of any tax on the estate of such decedent under this article filed with him and the value of the property of such decedent as fixed by the surrogate. The tax commission shall also furnish to each surrogate forms for the reports to be made by such surrogate, which shall correspond with the entries to be made in such book. Notwithstanding the foregoing provisions of this section,

the furnishing of such book and the keeping of such records may be dispensed with, if the surrogate and the tax commission shall deem the same to be unnecessary, provided the data necessary for the reports required to be made by the surrogate are available from other records of the surrogate's office.

§ *249-hh. Reports of surrogate and recording officer.* Each surrogate shall, on January, April, July and October first of each year, make a report, upon the forms furnished by the tax commission, containing all the data and matters required to be entered in such book, which shall be immediately forwarded to the tax commission. The recording officer of each county shall, at the same times, make reports containing a statement of any deed or other conveyance filed or recorded in his office, of any property, which appears to have been made or intended to take effect in possession or enjoyment after the death of the grantor or vendor, with the name and place of residence of such grantor or vendor, the name and place of residence of the grantee or vendee, and a description of the property transferred, which shall be immediately forwarded to the tax commission.

§ *249-ii. Reports of county treasurer.* Each county treasurer in a county in which the office of appraiser is not salaried shall make a report, under oath, to the tax commission, on January, April, July and October first of each year, of all taxes received by him under this article, stating for what estate and by whom and when paid. The form of such report may be prescribed by the tax commission. The county treasurer shall, within thirty days after the receipt thereof, pay to the department of taxation and finance all taxes received by him under this article, and for all taxes received by him and not so paid to the department of taxation and finance he shall pay interest at the rate of ten per centum per annum.

§ *249-jj. Disposition of revenues.* The tax commission shall deposit all taxes collected by it under this article in a responsible bank, banking house or trust company in the city of Albany designated by the state comptroller, which shall pay the highest rate of interest to the state for such deposit, to the credit of the

state comptroller on account of the estate tax. And every such bank, banking house or trust company shall execute and file with the state comptroller an undertaking to the state, in the sum, and with such sureties as are required and approved by the state comptroller, for the safe keeping and prompt payment on legal demand therefor of all such moneys held by or on deposit in such bank, banking house or trust company, with interest thereon on daily balances at such rate as may be agreed upon. Every such undertaking shall have indorsed thereon, or annexed thereto, the approval of the attorney-general as to its form. The state comptroller shall on or before the tenth day of each month pay to the commissioner of taxation and finance the balance of such taxes remaining in his hands at the close of business on the last day of the previous month. All taxes collected under this article when paid into the treasury of the state shall be applicable to the expenses of the state government and to such other purposes as the legislature shall by law direct.

§ *249-kk. Exemption in other laws not applicable.* No exemption provided for in any other article of this chapter or any other law of this state shall be construed as being applicable in any manner under this article.

§ *249-ll. Limitation of time.* The provisions of the civil practice act relative to limitation of time of enforcing a civil remedy shall not apply to any proceeding or action taken to levy, appraise, assess, determine or enforce the collection of any tax or interest prescribed by this article.

§ *249-mm. Application of article.* In respect of persons dying after this article becomes effective it shall supersede any other article of the tax law which imposes a transfer, inheritance or estate tax; but in respect of any person dying or who died before this article takes effect, the provisions of law imposing transfer, inheritance or estate taxes in effect at the time of his or her death shall remain in full force and effect. Nothing in this section contained shall affect any tax upon a transfer made prior to September first, nineteen hundred thirty, which was imposed as of the date of said transfer.

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In the
Supreme Court of the United States

OCTOBER TERM, 1936

No. 408 Original

THE STATE OF TEXAS,
Complainant,
against
THE STATE OF FLORIDA, ET AL.,
Respondents.

ANSWER OF THE RESPONDENT, THE STATE OF FLORIDA.

CARY D. LANDIS,
Attorney General of Florida,

H. E. CARTER,
Assistant Attorney General,

W. P. ALLEN,
Assistant Attorney General,

Solicitors for Respondent The State of Florida.

In the Supreme Court of the United States

OCTOBER TERM, 1936

No. 13 Original

THE STATE OF TEXAS,
Complainant,

against

THE STATE OF FLORIDA, ET AL.,
Respondents.

ANSWER OF THE RESPONDENT, THE STATE OF FLORIDA.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Answering the bill of complaint herein, the Respondent, the State of Florida, says:

1. Answering Paragraph numbered 1 of the bill of complaint, this respondent admits all and singular the allegations therein contained, except that it is without knowledge as to the citizenship and residence of the respondents Mabel Harlow Green and Hetty Sylvia Ann Howland Green Wilks.

2. Answering Paragraph numbered 2 of the bill of complaint, this respondent admits all and singular the allegations therein contained, except that it denies that this suit involves a controversy between a State and citizens of another State.

3. Answering Paragraph numbered 3 of the bill of complaint, this respondent upon information and belief admits all and singular the allegations therein contained.

4. Answering Paragraph numbered 4 of the bill of complaint, this respondent admits that there was in effect throughout the month of June, 1936, and had been continuously for a long time prior thereto the Estate Tax Law of Florida, known as Chapter 16015, Laws of Florida, Acts of 1933, which imposes a tax upon the transfer of the estate of every person dying after the effective date of said Act, who at the time of death was a resident of the State of Florida, and of non-residents of the State owning real and tangible personal property located in the State of Florida, and that the United States of America since a date long prior to June, 1936, has by law also imposed an estate tax upon the estates of decedents, and upon information and belief respondent admits that the Commonwealth of Massachusetts and the State of New York each had, during the month of June, 1936, and long prior thereto, a law imposing a transfer, succession, or inheritance tax upon the right of succession or inheritance.

5. Answering Paragraph numbered 5 of the bill of complaint, this respondent admits all and singular the allegations therein contained, except that as to the first sentence of said Paragraph, this respondent says that the State of Florida since a date prior to June, 1936, as a condition to succession, has by Chapter 16015, Laws of Florida, Acts of 1933, imposed a transfer, succession, or inheritance tax computed upon the net value of said estate and fixed at 80% of the estate taxes imposed by the United States of America under the Revenue Act of

1926, which said Chapter 16015, Laws of Florida, Acts of 1933, was in effect throughout the month of June, 1936.

6. Answering Paragraph numbered 6 of the bill of complaint, this respondent upon information and belief admits all and singular the allegations therein contained.

7. Answering Paragraph numbered 7 of the bill of complaint, this respondent upon information and belief admits all and singular the allegations therein contained.

8. Answering Paragraph numbered 8 of the bill of complaint, this respondent admits all and singular the allegations therein contained.

9. Answering Paragraph numbered 9 of the bill of complaint, this respondent admits all and singular the allegations therein contained.

10. Answering Paragraph numbered 10 of the bill of complaint, this respondent admits all and singular the allegations therein contained, except that it denies that the decedent Edward H. R. Green at the time of his death was domiciled within the State of Texas or in the City of Terrell in the County of Kaufman in the State of Texas, and except that this respondent denies that the value of the real estate and tangible personal property seized and possessed by the decedent, Edward H. R. Green, in the State of Florida at the time of his death, was as alleged in Paragraph numbered 11 of the bill of complaint, and this respondent alleges that the value of said property is and was at the time of the death of said Edward H. R. Green greatly in excess of $73,000.00.

11. Answering Paragraph numbered 11 of the bill

of complaint, this respondent admits upon information and belief all and singular the allegations therein contained, except that it denies that the value of the real estate and tangible personal property located in the State of Florida, of which the said Edward H. R. Green was seized and possessed at the time of his death, was of the value of only $73,000.00, and respondent alleges that the value of said property is and was at the time of the death of Edward H. R. Green greatly in excess of $73,000.00.

12. Answering Paragraph numbered 12 of the bill of complaint, this respondent admits all and singular the allegations therein contained, assuming the value of the property of the estate of the said Edward H. R. Green to be substantially as alleged in the bill of complaint.

13. Answering Paragraph numbered 13 of the bill of complaint, this respondent admits upon information and belief that under the succession, transfer, or inheritance tax laws of the State of Texas, the State of Texas is entitled to levy and collect a tax, but denies that the amount of such tax is approximately $5,326,000.00, and denies that the State of Texas under its succession, transfer, or inheritance tax laws is entitled to levy upon or collect from the estate of the decedent, Edward H. R. Green, any tax except such tax measured by the value of the real property owned by said Edward H. R. Green in the State of Texas at the time of his death.

14. Answering Paragraph numbered 14 of the bill of complaint, this respondent admits all and singular the allegations therein contained.

15. Answering Paragraph numbered 15 of the bill of complaint, this respondent admits upon information and belief that under the transfer, succession, or in-

heritance tax laws of the Commonwealth of Massachusetts, the Commonwealth of Massachusetts will levy and collect a tax, but denies that the amount of such tax will be approximately $5,809,000.00, and denies that the Commonwealth of Massachusetts under its succession, transfer, or inheritance tax laws is entitled to levy and collect any tax from the estate of the said decedent, Edward H. R. Green, measured by the value of the intangible personal property of said estate.

16. Answering Paragraph numbered 16 of the bill of complaint, this respondent admits upon information and belief that under the succession, transfer, or inheritance tax laws of the State of New York, the State of New York will levy and collect a tax, but denies that the amount of such tax will be approximately $7,132,000.00, and denies that the State of New York under its succession, transfer, or inheritance tax laws is entitled to levy and collect any tax from the estate of the decedent, Edward H. R. Green, measured by the value of the intangible personal property of said estate.

17. Answering Paragraph numbered 17 of the bill of complaint, this respondent admits upon information and belief all and singular the allegations therein contained, except that it denies that the State of Texas is entitled to taxes from the estate of Edward H. R. Green, deceased, in the amount of approximately $5,326,000.00.

18. Answering Paragraph numbered 18 of the bill of complaint, this respondent admits all and singular the allegations therein contained.

19. Answering Paragraph numbered 19 of the bill of complaint, this respondent is without knowledge as to whether Hetty Sylvia Ann Howland Green Wilks claims to be or is a sister of the said Edward H. R. Green,

and as to whether she asserts the right and privilege of succession to the whole of the tangible and intangible personal property owned by the said Green at death, and except that this respondent is without knowledge as to whether Mabel Harlow Green claims to be or is the widow of the said Edward H. R. Green, and as to whether she asserts the right and privilege of succession to the whole of the tangible and intangible property owned by the said Green at death.

20. Answering Paragraph numbered 20 of the bill of complaint, this respondent is without knowledge as to all and singular the allegations therein contained.

21. Answering Paragraph numbered 21 of the bill of complaint, this respondent is without knowledge as to whether the said Edward H. R. Green was born abroad a citizen of the United States of America, or whether his parents were at that time domiciled and residing in Bellows Falls, Vermont. Respondent is also without knowledge as to whether the said Edward H. R. Green in the year 1892 at the age of twenty-four entered into the State of Texas in the City of Terrell in the County of Kaufman and began to reside and to make his home in the said State of Texas. Respondent denies that the said Edward H. R. Green continued his residence and domicile within the State of Texas continuously at all times after 1892, until his death in 1936, and denies that throughout the whole of this period on innumerable occasions, the said Edward H. R. Green through civic activities and by frequent declarations manifested a clear intention and an unquestioned determination to maintain and preserve at all times his domicile and residence within the State of Texas. Respondent is without knowledge as to whether beginning in 1910 the unfortunate circumstances of the failing

health of the mother of Edward H. R. Green, together with the necessity for rendering assistance in the extensive financial activities of his said mother, required the absence of the decedent Green from Texas for longer and more frequent periods than had been his habit, custom, and wont, and is without knowledge as to whether the death of his mother, Hetty Green, in 1916, and the manifold duties coincident with the administration of her estate, and the great trusts and responsibilities imposed upon him by his mother and sister, the respondent Wilks enlarged the activities of Edward H. R. Green, and required of him the devotion and expenditure of a large portion of his time in the State of New York and in the Commonwealth of Massachusetts. Respondent admits that after the year 1916, the decedent Edward H. R. Green spent much of his time in the State of Florida, but denies that he did so because of his failing health, and denies that he did not during said time by declaration or act manifest any intention or purpose of abandoning any former residence and domicile elsewhere, and establishing the same in the State of Florida, and denies that he intended to retain continuously the State of Texas as his domicile, and denies that he regularly and repeatedly within each and every year until his death declared and manifested his intention to retain the State of Texas as his domicile, and denies that he meticulously avoided conduct or actions which under any statute or administrative rule of the State of Florida or any other State, might constitute him prima facie a resident or inhabitant or citizen of the State of Florida, or his domicile that of the State of Florida.

22. Answering Paragraph numbered 22 of the bill of complaint, this respondent denies that in law and in

fact the said Edward H. R. Green was domiciled at his death in the State of Texas, and denies that in law and in fact he was not domiciled at such time in the State of Florida, but admits that in law and in fact the said Edward H. R. Green at the time of his death was not domiciled in the Commonwealth of Massachusetts, or the State of New York.

23. Answering Paragraph numbered 23 of the bill of complaint, this respondent admits all and singular the allegations therein contained, except that respondent is without knowledge as to whether the respondent Mabel Harlow Green and the respondent Hetty Sylvia Ann Howland Green Wilks or either of them is entitled to succeed to the estate of the decedent Edward H. R. Green.

24. Answering Paragraph numbered 24 of the bill of complaint, this respondent is without knowledge as to all and singular the allegations therein contained.

25 Answering Paragraph numbered 25 of the bill of complaint, this respondent admits upon information and belief all and singular the allegations therein contained, except that this respondent is without knowledge as to the amount of the transfer, succession, or inheritance tax now lawfully due and owing to the State of Texas, and for which it has a just and lawful lien on the property of the estate of said Edward H. R. Green.

26. Answering Paragraph numbered 26 of the bill of complaint, this respondent admits upon information and belief all and singular the allegations therein contained.

27. Answering Paragraph numbered 27 of the bill of complaint, this respondent admits unqualifiedly in re-

spect to Florida and upon information and belief in respect to the States of Texas and New York and the Commonwealth of Massachusetts, all and singular the allegations therein contained, except that respondent is without knowledge as to whether the State of Texas will appear in any of the proceedings now instituted and enumerated in Paragraph numbered 26 of the bill of complaint.

28. Answering Paragraph numbered 28 of the bill of complaint, this respondent admits all and singular the allegations therein contained.

29. Answering Paragraph numbered 29 of the bill of complaint, this respondent admits all and singular the allegations therein contained.

30. Answering Paragraph numbered 30 of the bill of complaint, this respondent admits all and singular the allegations therein contained.

31. Answering Paragraph numbered 31 of the bill of complaint, this respondent admits as to the State of Florida and admits upon information and belief in respect to the Commonwealth of Massachusetts and the State of New York, all and singular the allegations therein contained.

32. Answering Paragraph numbered 32 of the bill of complaint, this respondent is without knowledge as to whether by reason of the facts averred in Paragraphs 11-17 and 24-28 in the bill of complaint, the rights of the State of Texas and its rightful and lawful lien for transfer, succession, or inheritance taxes as therein averred, are now in actual jeopardy, and as to whether the complainant is suffering and sustaining and will further suffer and sustain actual injury and irreparable damage

to its rights and to its lawful and rightful lien for transfer, succession, or inheritance taxes, unless the relief prayed for in the bill of complaint is granted.

33. Answering Paragraph numbered 33 of the bill of complaint, this respondent admits all and singular the allegations therein contained, except as to the amount of the transfer, succession, or inheritance tax upon the estate of the said decedent Green, to which the State of Texas is entitled and for which it has a lien on the property of said estate, and denies that the amount thereof is approximately $5,326,000.00, and denies that the amount of said tax is anywhere near $5,326,000.00.

34. Answering Paragraph numbered 34 of the bill of complaint, this respondent admits upon information and belief all and singular the allegations therein contained.

35. Answering Paragraph numbered 35 of the bill of complaint, this respondent admits all and singular the allegations therein contained.

36. Further answering the bill of complaint herein, this respondent denies that at the time of the death of the said Edward H. R. Green on or about June 8, 1936, or at any time during the month of June, 1936, the said Edward H. R. Green was domiciled in the State of Texas or in the commonwealth of Massachusetts, or in the State of New York, or in any State other than the State of Florida.

COUNTERCLAIM

And for a counterclaim the respondent, the State of Florida, re-avers all the matters alleged in the foregoing answer, and here alleges that the said decedent,

H. R. Green, was at the time of his death and continuously for a long time prior thereto dom-hin the State of Florida, in the City of Miami Dade County in said State. That the said Ed-R. Green was at the time of his death the owner essed of property of very great value, consist-al estate and both tangible and intangible per-perty, the exact character, description, value ion of the said tangible and intangible personal being to this respondent unknown, and as to s respondent has no means of knowing and will until such time as an inventory and appraisal n due course.

tate of Florida since a date prior to June, 1936, apter 16015, Laws of Florida, Acts of 1933, l imposed an estate or inheritance tax upon the by inheritance, descent, devise, succession, or f the estate of every person dying after the ef-te of said Act, who at the time of death was a of the State of Florida or who at the time of s the owner of real or tangible personal prop-ally located within the State of Florida, the f said tax being computed upon the net value tate and fixed at 80% of the estate taxes im-the United States of America under the Rev-of 1926, which said Chapter 16015, Laws of Acts of 1933, became effective on October 1, 3, and continued to be and was in full force and n thence throughout the month of June, A. D. was in effect at the time of the death of the ard H. R. Green. That under authority of said 6015, Laws of Florida, Acts of 1933, this re-the State of Florida is entitled to levy and col-ate or inheritance tax upon the transfer by in-

heritance, descent, devise, succession, or bequest of the estate of said Edward H. R. Green, computed upon the net value of all the real property and tangible personal property of said estate situate in the State of Florida, and upon all the intangible personal property of said estate wherever situate, and fixed at 80% of the estate taxes imposed by the United States of America under the Revenue Act of 1926, the amount of which said tax this respondent upon information and belief alleges will be approximately $6,000,000.00.

For the information of the Court, Chapter 16015, Laws of Florida, Acts of 1933, is set out in full in Appendix A hereto, and this respondent prays this Court to consider the applicable provisions of said statute and the existence and effect thereof as an allegation of this counterclaim as if here set forth in full.

WHEREFORE, this Respondent prays by way of counterclaim that this Court may determine, declare, adjudge, and decree whether for the purpose of taxation as herein claimed, the said Edward H. R. Green was domiciled at death in the State of Florida, or in the State of Texas, or in the Commonwealth of Massachusetts, or in the State of New York, and more particularly may determine, declare, adjudge, and decree that the said Edward H. R. Green for purposes of taxation as aforesaid was domiciled at death within the State of Florida, and not within the State of Texas, or within the Commonwealth of Massachusetts, or within the State of New York, and further may determine, declare, adjudge and decree that this Respondent, the State of Florida, has the exclusive legal right and jurisdiction to impose and collect an estate or inheritance tax upon the

transfer by inheritance, descent, devise, succession, or bequest, of the intangible personal property owned by the said Edward H. R. Green at the time of his death.

THE STATE OF FLORIDA,
Respondent.

By .....
CARY D. LANDIS,
Attorney General.

CARY D. LANDIS,
Attorney General of Florida,
J. E. CARTER,
Assistant Attorney General,
W. P. ALLEN,
Assistant Attorney General,

Solicitors for Respondent
The State of Florida.

APPENDIX A

CHAPTER 16015—(No. 158).

SENATE BILL NO. 537

N ACT Relating to the Assessment, Levying and Collection of Taxes Upon the Estates of Decedents, to Prescribe the Rates of Such Taxes, and the Method of Computing and Collecting the Same, to Provide for the Enforcement Thereof and for the Disposition of Revenue Therefrom, and Imposing Penalties for the Violation of this Act.

e It Enacted by the Legislature of the State of Florida:

Section 1. This Act may be cited as the Estate Tax Law of lorida.

Section 2. When used in this Act:

(a) The term "Commissioner" means the Comptroller of the tate of Florida, as Commissioner of Revnue.

(b) The term "executor" means the executor, administrator curator of the decedent, or, if there is no executor, admintrator or curator appointed, qualified and acting, then any perin who is in the actual or constructive possession of any propty included in the gross estate of the decedent;

(c) The word "person" means persons, corporations, associaons, joint stock companies and business trusts;

(d) The word "transfer" shall be taken to include the passing property or any interest therein, in possession or enjoyment, resent or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift, or appointment in the anner herein described;

(e) The word "decedent" shall include the testator, intestate, antor, bargainor, vendor, or donor;

(f) The word "resident" means a natural person domiciled in e State of Florida;

(g) The word "non-resident" means a natural person domiled without the State of Florida;

(h) The term "gross estate" means the gross estate as determined under the provisions of the applicable federal revenue act;

(i) The term "net estate" means the net estate as determined under the provisions of the applicable federal revenue act;

(j) The term "tangible personal property" means corporeal personal property, including money; and the term "intangible personal property" means incorporeal personal property including deposits in banks, negotiable instruments, mortgages, debts, receivables, shares of stock, bonds, notes, credits, evidences of an interest in property, evidences of debt and choses in action generally.

(k) The term "United States" when used in a geographical sense includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia.

Section 3. A tax is hereby imposed upon the transfer of the estate of every person dying after the effective date of this Act, who at the time of death was a resident of this State, the amount of which shall be a sum equal to the amount by which the credit allowable under the applicable federal revenue act for estate, inheritance, legacy and succession taxes actually paid to the several states shall exceed the aggregate amount of all constitutionally valid estate, inheritance, legacy and succession taxes actually paid to the several states of the United States (other than the State of Florida) in respect to any property owned by such decedent or subject to such taxes as a part of or in connection with his estate.

Section 4. A tax is hereby imposed upon the transfer of real property situate and tangible personal property having an actual situs in this State of every person who at the time of death was not a resident of this State but was a resident of the United States, the amount of which shall be a sum equal to such proportion of the amount of the credit allowable under the applicable federal revenue act for estate, inheritance, legacy and succession taxes actually paid to the several states, as the value of the property taxable in this State bears to the value of the entire gross estate wherever situate.

Section 5. A tax is hereby imposed upon the transfer of real property situate and tangible personal property having an actual situs in this State and upon intangible personal property physically present within this State of every person who at the time of death was not a resident of the United States, the amount of which shall be a sum equal to such proportion of the credit allowable under the applicable federal revenue act for estate, inheritance, legacy and succession taxes actually paid to the several states, as the value of the property taxable in this State bears to the value of the estate taxable by the United States wherever situate. For the purpose of this Section, stock in a corporation organized under the laws of this State shall be deemed physically present within this State. The amount receivable as insurance upon the life of a decedent who at the time of his death was not a resident of the United States, and any moneys deposited with any person carrying on the banking business by or for such a decedent who was not engaged in business in the United States at the time of his death, shall not for the purpose of this Section, be deemed to be physically present in this State.

Section 6. (a) The Comptroller of the State of Florida shall be the Commissioner of Revenue of the State of Florida and as such Commissioner shall, except as otherwise provided in this Act, have jurisdiction and be charged with the administration and enforcement of the provisions of this Act.

(b) The Commissioner, for the purpose of ascertaining the correctness of any return, or for the purpose of making a return where none has been made, is hereby authorized to examine any books, papers, records or memoranda, bearing upon the matter required to be included in the return, and may require the attendance of persons rendering return or of any officer or employee of such persons, or of any person having knowledge in the premises, at any convenient place in the County in which such person resides, and may take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons.

(c) If any person summoned to appear under this Act to testify, or to produce books, papers, or other data, shall refuse to do so, the Circuit Court for the county in which such person

resides shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, or other data.

(d) The Commissioner may appoint and remove such Deputy Commissioners, Examiners, Appraisers, Attorneys and Employees as he may deem necessary, such persons to have such duties and powers as the Commissioner may from time to time prescribe, the salaries of all Deputy Commissioners, Examiners, Appraisers, Attorneys and Employees employed by the Commissioner shall be such as he may prescribe, and the Commissioner and such Deputy Commissioners, Examiners, Appraisers, Attorneys and Employees shall be allowed such reasonable and necessary traveling and other expenses as may be incurred in performance of their duties.

(e) The Commissioner may require such of the Deputy Commissioners, Examiners, Appraisers, Attorneys and Employees as he may designate to give bond payable to the State of Florida for the faithful performances of their duties in such form and with such sureties as he may determine, and all premiums on such bonds shall be paid by the State.

(f) All officers, empowered by law to administer oaths and the Commissioner, and the Deputy Commissioners, Examiners, Appraisers and Attorneys appointed by him are hereby authorized and empowered to administer an oath to all persons giving any testimony before them or to take the acknowledgment of any person in respect to any return or report required under this Act.

(g) All Deputy Commissioners, Examiners, Appraisers and Attorneys appointed by the Commissioner shall have for identification purpose, proper credentials signed by the Commissioner and exhibit the same upon demand.

(h) The Commissioner may from time to time make such rules and regulations not inconsistent with this Act as he may deem necessary to enforce its provisions, and may adopt such rules and regulations as are or may be promulgated with respect to the estate tax provisions of the Revenue Act of the United States in so far as they shall be applicable hereto. The Commissioner may from time to time prescribe such forms as he shall deem proper for the administration of this Act.

(i) Except in accordance with proper judicial order, or as otherwise provided by law, it shall be unlawful for the Commissioner, or any Deputy Commissioner, Examiner, Appraiser, Attorney or other Employee, to divulge or make known in any manner the value of any estate or any particulars set forth or disclosed in any report or return required. Nothing herein shall be construed to prohibit the publication of statistics, so classified as to prevent the identification of particular reports or returns and the items thereof; provided, however, that the Commissioner may permit the Commissioner of Internal Revenue, or any Collector of Internal Revenue, or Internal Revenue Agent of the United States or the proper officer of any state imposing an estate tax or inheritance tax, or the authorized representative of such officer, to inspect the estate tax returns of any individual, or may furnish to such officer or his authorized representatives an abstract of the return of any executor or furnish information concerning any item contained in any return or disclosed by the report of any investigation of the return of any executor.

(j) Said Commissioner may sue and be sued in his name as such Commissioner, but shall not be required to give supersedeas or other bond in any cause or court of this State.

(k) Said Commissioner is authorized to employ special counsel to advise him and to conduct any litigation or proceeding that may be brought by or against him, and such special counsel shall be paid such compensation as said Commissioner shall deem proper.

(l) Said Commissioner is authorized to employ special appraisers for the purpose of determining the value of any property which is or is believed by the Commissioner to be subject to the tax imposed by this Act, and such special appraisers shall be paid such compensation as said Commissioner shall deem proper.

Section 7. (a) The executor, within two months after the decedent's death, or within a like period after qualifying as such, shall give written notice thereof to the Commissioner. The executor shall also, at such times and in such manner as may be required by regulations made pursuant to law, file with the Commissioner a return under oath, setting forth (1) a description and the value of the gross estate of the decedent at the time

of his death, as defined in the applicable federal revenue Act; or, in case of the estate of a decedent who at the time of death was not domiciled in the United States, of that part of his gross estate situated in the United States; (2) the deductions allowable under the applicable federal revenue Act; (3) the value of the net estate of the decedent as defined in the applicable federal revenue Act; (4) a description and the value of such part of the real property and tangible personal property of the gross estate of a decedent who at the time of his death was a resident of the State of Florida as shall be located or situate, at the time of his death, without the State of Florida; (5) a description and the value of such part of the real property and tangible personal property of the gross estate of a decedent who at the time of his death was a non-resident of the State of Florida but a resident of the United States as shall be located or situate, at the time of his death, within the State of Florida; (6) a description and the value of real property situate and personal property having an actual situs in this State and intangible personal property physically present within this State of the estate of a decedent who at the time of his death was not a resident of the United States; and (7) the tax paid or payable thereon and the manner of computing the same; or such part of such information as may at the time be ascertainable; and such supplemental data as may be necessary to determine and establish the correct tax.

(b) Return shall be made in all cases where the gross estate at the death of the decedent exceeds $50,000, and in the case of the estate of every decedent who at the time of his death was not domiciled in the United States whose gross estate shall include any real property situate and tangible personal property having an actual situs in the State of Florida and intangible personal property physically present within the State of Florida. If the executor is unable to make a complete return as to any part of the gross estate of the decedent, he shall include in his return a description of such part and the name of every person holding a legal or beneficial interest therein, and upon notice from the Commissioner such person shall in like manner make a return as to such part of the gross estate.

(c) If the failure to file a return is due to sickness or absence, the Commissioner may allow such further time, not ex-

ceeding 30 days, for making and filing the return as he deems proper.

(d) If any person, corporation, company, or association fails to make and file a return or list at the time prescribed by law or by regulation made under authority of law, or makes, wilfully or otherwise, a false or fraudulent return or list, the Commissioner shall make the return or list from his own knowledge and from such information as he can obtain through testimony or otherwise. Any return or list so made by the Commissioner, shall be prima facie good and sufficient for all legal purposes.

Section 8. (a) The tax imposed by this Act shall be due and payable one year after the decedent's death, and shall be paid by the executor to the Commissioner.

(b) Where the Commissioner finds that the payment on the due date of the tax or any part thereof would impose undue hardship upon the estate, the Commissioner may extend the time for payment of any such part, but no extension shall be for more than one year and the aggregate of extensions with respect to any estate shall not exceed five years from the due date. In such case the amount in respect of which the extension is granted shall be paid on or before the date of the expiration of the period of the extension unless a further extension is granted.

(c) If the time for the payment is thus extended there shall be collected, as a part of such amount, interest thereon at the rate of 6 per centum per annum from the due date of the tax to the date the same shall be paid.

Section 9. As soon as practicable after the return is filed the Commissioner shall examine it, if it then appears that the correct amount of tax is greater or less than that shown in the return, the tax shall be recomputed. If the amount already paid exceeds that which should have been paid on the basis of the return so recomputed, the excess so paid shall be credited or refunded to the taxpayer in accordance with the provisions of this Act. If the amount already paid is less than the amount which should have been paid, the difference, together with interest thereon at the rate of one-half of one per centum per month from the time the tax was due shall be paid upon notice and demand by the Commissioner. If any part of the deficiency is due

to negligence or intentional disregard of the provisions
Act or of rules and regulations issued pursuant hereto
knowledge thereof but without intent to defraud, there sh
added as a penalty, ten per centum of the total amount
deficiency in the tax, and if any part of the deficiency is wi
made with intent to defraud, there shall be added as a pe
fifty per centum of the total amount of such deficiency
interest in either such a case shall be collected at the rate
per centum per month on the amount of such deficiency
tax and penalty from the time it was due, which interes
penalty shall become due and payable upon notice and de
by the Commissioner and such executor shall be liable t
State personally and on his official bond, if any, for any l
the State accruing under the above provisions through his
gence or wilful neglect. The Commissioner shall have pow
compromise or remit any penalty imposed pursuant to this
tion. If upon examination of a return made, a tax or a defici
in tax is disclosed, the executor shall be notified thereof by
Commissioner and given a period of not less than th'rty
more than sixty days after such notice is sent by regist
mail, in which to show cause why the tax or deficiency sh
not be paid. The Commissioner shall proceed to hear and
termine all questions involving such tax or deficiency upon
less than ten days' notice to the executor of the date of
hearing, and a final decision thereon shall be made as qui
as practicable, and any tax or deficiency in tax found due a
such hearing, shall be assessed and paid, together with the
nalty and interest, if any applicable thereto, within sixty d
after notice and demand by the Commissioner. In all heari
before the Commissioner, oral, documentary or other evide
may be introduced.

Section 10. The findings and determination of any tax
deficiency made pursuant to any hearing as provided in Sect
9 of this Act, shall be in writing and a copy thereof, toget
with demand for payment of such tax or deficiency, shall be s
by registered mail to the executor. The findings of the C
missioner and the determination by the Commissioner of
questions involving any tax or deficiency shall be final unl
the executor, or other party interested, shall within fifty da
from the date of the receipt of a copy of such findings and det

mination, bring a suit in chancery against the Commissioner and such other parties as are interested. It shall not be necessary to join as parties to such suit any heir-at-law, next of kin, distributee, legatee or devisee of said decedent. The bill of complaint shall contain a concise statement of the facts and shall have annexed thereto a copy of the return and of the findings and determination of the Commissioner and shall pray for an abatement of the tax, in such amount and to such extent, in part or in whole, and for such other relief as the executor shall desire. Such suits shall proceed as other suits in chancery. Either the Commissioner, the executor or any other party may appeal to the Supreme Court of Florida as in other cases.

Section 11. Where the amount of tax shown upon the return made in good faith has been fully paid, or time for payment has been extended, as provided in this Act beyond one year after the decedent's death, and an additional amount of tax is, after expiration of such period of one year found to be due, then such additional amount shall be paid upon notice and demand by the Commissioner, and if it remains unpaid for thirty days after such notice and demand, there shall be added as part of the tax, interest on such additional amount at the rate of twelve per centum per annum from the expiration of such period until paid, and such additional tax and interest shall, until paid, be and remain a lien upon the entire gross estate.

Section 12. The Commissioner shall issue to the executor upon payment of the tax imposed by this Act, receipts in triplicate, any of which shall be sufficient evidence of such payment, and shall entitle the executor to be credited and allowed the amount thereof by any court having jurisdiction to audit or settle his accounts. If the executor files a complete return and makes written application to the Commissioner for determination of the amount of the tax and discharge from personal liability therefor, the Commissioner as soon as possible, and in any event within one year after receipt of such application, shall notify the executor of the amount of the tax, and upon payment thereof the executor shall be discharged from personal liability for any additional tax thereafter found to be due, and shall be entitled to receive from the Commissioner a receipt in writing showing such discharge; provided, however, that such discharge

shall not operate to release the gross estate of the lien of any additional tax that may thereafter be found to be due, while the title to such gross estate remains in the executor or in the heirs, devisees, or distributees thereof; but after such discharge is given no part of such gross estate shall be subject to such lien or to any claim or demand for any such tax after the title thereto has passed to a bona fide purchaser for value.

Section 13. If any tax imposed by this Chapter or any portion of such tax be unpaid within ninety days after the same becomes due, and the time for payment be not extended, the Commissioner shall issue a warrant directed to the Sheriff of any county of the State in which the estate or any part thereof may be situated, commanding him to levy upon and sell the real and personal property of such estate found within his county, for the payment of the amount thereof, with such interest and penalties, if any, as may have accrued thereon or been assessed against the same, together with the cost of executing the warrant, and to return such warrant to the Commissioner and pay to him the money collected by virtue thereof, by a time to be therein specified, not less than sixty days from the date of the warrant. The sheriff thereupon shall proceed upon the same in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for services in executing the warrant as are now allowed by law for like services to be collected in the same manner as now provided by law. Alias and pluries warrants may issue from time to time as said Commissioner may deem proper until the entire amount of the tax, deficiency, interest, penalties and costs have been recovered.

Section 14. If the tax or any part thereof is paid or collected out of that part of the estate passing to or in possession of any person other than the executor in his capacity as such, such person shall be entitled to a reimbursement out of any part of the estate still undistributed or by a just and equitable contribution by the person whose interest in the estate of the decedent would have been reduced if the tax had been paid before the distribution of the estate or whose interest in the estate is subject to an equal or prior liability for the payment of tax, debts, or other

harges against the estate, it being the purpose and intent of this ection that so far as is practical and unless otherwise directed y the will of the decedent, the tax shall be paid out of the estate efore its distribution; but the Commissioner shall not be harged with enforcing contribution from any person or persons.

Section 15. Unless the tax is sooner paid in full, it shall be a ien for ten years upon the gross estate of the decedent, except hat such part of the gross estate as is used for the payment of harges against the estate and expenses of its administration, al- owed by any court having jurisdiction thereof, shall be divested f such lien. If the Commissioner is satisfied that no tax liabil- ty exists or that the tax liability of an estate has been fully dis- harged or provided for, he may issue a waiver releasing any or ll property of such estate from the lien herein imposed. There hall be paid to the Commissioner a fee of one dollar for each waiver so issued.

Section 16. If any executor shall make distribution either in whole or in part of any of the property of an estate to the heirs, ext of kin, distributees, legatees or devisees without having aid or secured the tax due the State of Florida under this Act, r obtained the release of such property from the lien of such tax e shall become personally liable for the tax so due the State, r so much thereof as may remain due and unpaid, to the full xtent of the full value of any property belonging to such person r estate which may come into his hands, custody or control.

Section 17. Every executor shall have the same right and ower to take possession of or sell, convey and dispose of real state as assets of the estate for the payment of the tax imposed y this Act as he may have for the payment of the debts of the ecedent.

Section 18. Actions may be brought within the time or times erein specified by the Commissioner to recover the amount of ny taxes, penalties and interest due under this Act. Every such ction shall be brought in the county where the estate is being or as been administered, or if no administration be had in this State, then in any county where any of the property of the estate hall be situate.

Section 19. No final account of an executor of the estate of nonresident, nor of the estate of a resident where the value of

the entire estate wherever situate exceeds $50,000, shall be allowed by any court unless such account shows, and the judge of said court finds, that all taxes imposed by the provisions of this Act upon said executor which have become payable, have been paid. The certificate of the Commissioner of non-liability for taxes or his receipt for the amount of the tax therein certified shall be conclusive in such proceedings as to the liability or the payment of the tax to the extent of said certificate.

Section 20. For the purpose of facilitating the settlement and distribution of estates held by executors, the Commissioner may, on behalf of the State, agree upon the amount of taxes at any time due or to become due from such executor under the provisions of this statute, and payment in accordance with such agreement shall be full satisfaction of the taxes to which the agreement relates.

Section 21. Except as otherwise provided in this Act, the amount of estate taxes due under any return made under this Act shall be determined and assessed within three years from the date the return was filed, and no suit or other proceedings for the collection of any taxes due, shall be begun after the expiration of three years from date such return was filed; provided, however, that in the case of a false or fraudulent return or of a failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment at any time.

Section 22. If upon examination of any return made under this Act, or upon proofs submitted by the executor, it appears that an amount of estate tax has been paid in excess of that properly due, then the amount in excess shall, upon written claim therefor being filed by the executor with the Commissioner, be refunded to the executor and paid upon the warrant of the Commissioner drawn upon the State Treasurer who shall honor and pay the same. No executor shall be entitled to file claim or bring any action for any refund after the expiration of three years from the time such payment was made unless it shall be made to appear that the right to such refund could not have been established within such period of three years.

Section 23. The County Judges of this State shall, on or before the tenth day of every month, notify the Commissioner of the names of all decedents, the name and address of the respective executors, administrators or curators appointed, the amount of the bonds, if any, required by the court, and the probable value of the estates, in all estates of decedents whose wills have been probated or propounded for probate before him or upon which letters testamentary or upon whose estates letters of administration or curatorship have been sought or granted, during the preceding month, and such report shall contain any other information which the County Judge may have concerning the estate of such decedents; and said County Judges shall also furnish forthwith such further information, from the records and files of his office in regard to such estates, as the Commissioner may from time to time require. The expenses of making such reports shall be charged as cost of administration against the estate of such decedents.

Section 24. If the executor of the estate of a nonresident be a corporation duly authorized, qualified and acting as such executor in the jurisdiction of the domicile of such decedent, it shall be under the duties and obligations as to the giving of notices and filing of returns required by this Act, and may bring and defend actions and suits as may be authorized or permitted by this Act, to the same extent as an individual executor, notwithstanding that such corporation may be prohibited from exercising, in this State, any powers of executor, but nothing herein contained shall be taken or construed as authorizing corporations not authorized to do business in this State to qualify or act as executor, administrator or in any other fiduciary capacity, if otherwise prohibited by the laws of this State, except to the extent herein expressly provided.

Section 25. The estate of each decedent whose property shall be subject to the laws of the State of Florida, shall be deemed prima facie liable for estate taxes under this Act, and shall be subject to a lien therefor in such amount as may be later determined to be due and payable on such estate as provided in this Act. Such presumption of liability shall begin on the date of the death of the decedent and shall continue until the full settlement of all taxes which may be found to be due under this Act,

such settlement to be shown by receipts for all taxes due to be issued by the Commissioner as provided for in this Act. Whenever it shall be made to appear to the Commissioner that an estate is not subject to any tax under this Act, it shall be the duty of such Commissioner to issue to the executor, administrator, curator or other personal representative, or to the heirs, devisees, or legatees of the decedent, a certificate in writing to that effect, showing such non-liability to tax, which certificate of non-liability shall have the same force and effect as a receipt showing payment. Such certificate of non-liability shall be subject to record and admissible in evidence in like manner as receipts showing payment of taxes. There shall be paid to the Commissioner a fee of one dollar for each certificate so issued.

Section 26. Where no receipt for the payment of taxes, or no certificate of non-liability for taxes, has been issued or recorded as provided for in this Act, the property constituting the estate of the decedent in this State shall be deemed fully acquitted and discharged of all liability for estate or inheritance taxes under this Act after a lapse of five years from the date of the death of the decedent unless the Commissioner shall make out and file and have recorded in the public records of the county wherein any part of the estate of the decedent may be situated in this State, a notice of lien against the property of the estate, specifying the amount or approximate amount of taxes claimed to be due to the State of Florida under this Act, which notice of lien shall continue said lien in force for an additional period of five years or until payment is made. Such notice of lien shall be filed and recorded in the Book of Deeds in the office of the Clerk of the Circuit Court.

Section 27. (a) Whoever knowingly makes any false statement in any notice or return required to be filed under this Act shall be liable to a penalty of not exceeding $5,000, or imprisonment not exceeding one year, or both.

(b) Whoever fails to comply with any duty imposed upon him by Section 7 of this Act, or having in his possession or control any record, filed, or paper, containing or supposed to contain any information concerning the estate of the decedent, or, having in his possession or control any property comprised in the gross estate of the decedent, fails to exhibit the same upon re-

quest to the Commissioner or any Deputy Commissioner, Examiner, Appraiser, or Attorney appointed pursuant to this Act, who desires to examine the same in the performance of his duties under this Act, shall be liable to a penalty of not exceeding $500.00, to be recovered with costs of suit, in a civil action in the name of the State of Florida.

(c) Any person required under this Act to pay any tax, or required by law or regulation made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this Act, who willfully fails to pay such tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

(d) Any person required under this Act to collect, account for and pay over any tax imposed by this Act, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this Act or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

(e) Any person who willfully aids or assists in, or procures, counsels, or advises, the preparation or presentation under, or in connection with any matter arising under this Act, of a false or fraudulent return, affidavit, claim, or document, shall (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim or document) be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

Section 28. All taxes and fees levied and collected under this Act shall be paid into the Treasury of the State of Florida, and when so paid into the Treasury shall be applicable to the expense

of the State Government and to such other purpose as the Legislature shall by law direct,including the payment of all costs and expenses incurred by the Commissioner in the administration or enforcement of this Act. All amounts necessary to meet and pay such costs and expenses from time to time are hereby appropriated and made available for that purpose, and such costs and expenses, and any amounts which may be necessary to make refunds of taxes as provided for in this Act shall be paid out on vouchers drawn and approved by the Commissioner upon the State Treasurer of the State of Florida, who is required to pay the same.

Section 29. This Act shall remain in force and effect so long as the Government of the United States retains in full force and effect as a part of the revenue laws of the United States a federal estate tax and this Act shall cease to be operative as and when the Government of the United States ceases to impose any estate tax of the United States.

Section 30. If any section, sub-section, paragraph, or provision of this Act shall be declared to be unconstitutional, or shall be found to be invalid or unenforcible, such findings shall not affect any of the remaining portions of this Act as would be valid or constitutional and enforcible, if such invalid portion had been omitted. The Legislature hereby declares that it is its intention to enact this Act, and each and every portion and provision thereof that can be made legally applicable and enforcible under the constitution of the State of Florida.

Section 31. All laws or parts of laws in conflict with this Act are hereby repealed.

Section 32. When not otherwise provided for in this Act, the rules of interpretation and construction applicable to the estate and inheritance tax laws of the United States shall apply to and be followed in the interpretation of this Act.

Section 33. This Act shall take effect at 12:01 o'clock A. M. Eastern Standard Time, October 1, A. D. 1933, and shall apply to the estates of decedents dying thereafter; and the estates of decedents dying prior thereto shall be taxed in accordance with the statutes and laws of Florida in force prior to the effective date of this Act.

Approved June 7, 1933.

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FILED
MAY 24 1937
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term, 1936. No. ~~13~~ 7 Original.

THE STATE OF TEXAS,
Plaintiff,

v.

THE STATE OF FLORIDA, ET AL.,
Defendants.

Answer of Mabel Harlow Green, One of the Defendants.

GEORGE WHARTON PEPPER,
JOSEPH J. FISCHER,
2228 Land Title Building,
Philadelphia, Penna.,
Solicitors for Defendant,
Mabel Harlow Green.

PEPPER, BODINE, STOKES & SCHOCH,
Of Counsel.

International, 2d Chestnut St., Philadelphia

IN THE

Supreme Court of the United States.

October Term, 1936.

No. . ORIGINAL.

THE STATE OF TEXAS,
Plaintiff,

against

THE STATE OF FLORIDA, ET AL.,
Defendants.

ANSWER OF MABEL HARLOW GREEN, ONE OF THE DEFENDANTS.

MABEL HARLOW GREEN, one of the defendants herein, for answer to ~~complainant's~~ plaintiff's bill of complaint, respectfully shows:

1. Paragraph 1 of the bill is admitted, except that at the date of the decedent's death this defendant was domiciled in Texas and except that she is now only a temporary resident of New York.

2. This defendant has no knowledge with respect to the averments of paragraph 2 of the bill.

3. This defendant is without knowledge as to the facts averred in paragraph 3 of the bill.

4. Paragraph 4 of the bill is admitted.

5. This defendant is without knowledge as to the facts averred in paragraph 5 of the bill.

6. This defendant is without knowledge as to the facts averred in paragraph 6 of the bill.

7. This defendant is without knowledge as to the facts averred in paragraph 7 of the bill.

8. Paragraph 8 of the bill is admitted, except that this defendant is informed, believes and therefore avers that the 80 per cent. credit permitted to the decedent's estate by section 301 of the Revenue Act of 1926 applies only to the tax paid to the state in which the decedent died domiciled.

9. Paragraph 9 of the bill is admitted.

10. It is admitted that in the month of June, 1936, the decedent, Edward H. R. Green, was domiciled in the State of Texas, in the City of Terrell, in the County of Kaufman, and that he died in Essex County, in the State of New York, where he was temporarily sojourning. The defendant admits that he was possessed at the time of his death of property of great value, but is without knowledge as to the extent, location, character and value thereof.

11. This defendant is without knowledge as to the facts averred in paragraph 11 of the bill.

12. This defendant is without knowledge as to the facts averred in paragraph 12 of the bill.

13. This defendant is without knowledge as to the facts averred in paragraph 13 of the bill; but this defendant avers that under the law of Texas where the decedent died domiciled, she was the owner at the time of his death of one-half of all property acquired by the decedent between July 10, 1917 and June 8, 1936, which one-half was and is free from all Federal and State inheritance, succession or transfer taxes.

14. This defendant is without knowledge as to the facts averred in paragraph 14 of the bill.

15. This defendant is without knowledge as to the facts averred in paragraph 15 of the bill.

16. This defendant is without knowledge as to the facts averred in paragraph 16 of the bill.

17. This defendant is without knowledge as to the facts averred in paragraph 17 of the bill.

18. Paragraph 18 of the bill is admitted.

19. Paragraph 19 of the bill is admitted.

20. Paragraph 20 of the bill is admitted.

21. Paragraph 21 of the bill is admitted.

22. Paragraph 22 of the bill is admitted.

23. On information it is admitted that the State of Florida, the Commonwealth of Massachusetts and the State of New York claim that the decedent was domiciled at death within its territorial limits. This defendant is advised, believes, and therefore avers that the payment of the transfer, succession or inheritance taxes to the state of domicile is a condition of the right and privilege of succession in such state.

24. This defendant admits that the decedent did not die possessed of sufficient property physically situated in the State of Texas to satisfy the asserted claim and asserted liens of the State of Texas for inheritance tax. The other averments of paragraph 24 of the bill and their implications are denied.

25. This defendant is without knowledge as to the facts averred in paragraph 25 of the bill.

26. Paragraph 26 of the bill is admitted, except that this defendant is without knowledge as to whether the right of the State of New York or any of the other defendant states to a succession, transfer or inheritance tax on the estate of the decedent is involved in the proceeding before the Surrogate of Essex County, New York.

27. Paragraph 27 of the bill is admitted, except that this defendant is without knowledge as to whether the State of Texas, the State of Florida, the State of New York or the Commonwealth of Massachusetts will appear in any of the proceedings mentioned in paragraph 27 of the bill of complaint.

28. This defendant is without knowledge as to the facts averred in paragraph 28 of the bill.

29. This defendant is without knowledge as to the conclusions of law averred in paragraph 29 of the bill or whether this Court has jurisdiction to entertain the bill.

30. It is admitted that in none of the proceedings referred to in paragraph 26 of the bill has any adjudication as to domicile been made, except as to Texas; and it is admitted that in none of such states has there been any adjudication as to liability for taxes. Except as aforesaid, the averments of paragraph 30 are denied.

31. Paragraph 31 of the bill is admitted.

32. This defendant is without knowledge as to the facts averred in paragraph 32 of the bill.

33. This defendant is without knowledge as to the facts averred in paragraph 33 of the bill.

34. If the plaintiff, the State of Texas, has brought this bill solely in order to collect the transfer, succession or inheritance taxes which it claims, nevertheless this defendant is informed, believes and therefore avers that in case this court determines that Texas or any one of the three defendant states was the domicile of the decedent, such determination will be binding upon all of the defendants, not only for tax purposes, but also for the purpose of distribution of the estate of the decedent to the party or parties thereunto entitled under the laws of the state so determined to be the domicile.

35. Subject to the foregoing it is admitted that an actual controversy now exists between the above parties.

WHEREFORE, this defendant submits herself to the judgment of your Honorable Court upon the question whether it shall determine that Texas was the domicile of the decedent, or shall dismiss the bill of complaint.

GEORGE WHARTON PEPPER,

JOSEPH J. FISCHER,
Solicitors for Mabel Harlow Green.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1936.

~~13~~ 8 7

No. ~~13~~ ORIGINAL.

THE STATE OF TEXAS,

Complainant,

against

THE STATE OF FLORIDA, THE COMMONWEALTH OF MASSACHUSETTS, THE STATE OF NEW YORK, MABEL HOWLAND GREEN, AND HETTY SYLVIA ANN HOWLAND GREEN WILKS,

Respondents.

ANSWER OF THE RESPONDENT HETTY SYLVIA ANN HOWLAND GREEN WILKS.

HARRISON TWEED,
TIMOTHY N. PFEIFFER,
Attorneys for the Respondent Hetty Sylvia A. H. Green Wilks.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1936

No. 13 ORIGINAL

THE STATE OF TEXAS,

Complainant,

against

THE STATE OF FLORIDA, *ET AL.*,

Respondents.

ANSWER OF THE RESPONDENT HETTY SYLVIA ANN HOWLAND GREEN WILKS.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

COMES now the respondent Hetty Sylvia Ann Howland Green Wilks, a citizen of the United States of America and resident in the State of New York, and answers the Bill of Complaint of the State of Texas in the above entitled cause as follows:

1. Answering Paragraphs 1, 2, 4, 8, 9, 18, 19, 20, 23, 26, 27, 28, 29, 30, 31, 34 and 35, this respondent admits all and singular the averments contained therein.

2. Answering Paragraphs 13, 24, 32 and 33, this respondent denies all and singular the averments contained therein.

3. Answering Paragraphs 3, 5, 6 and 7, this respondent admits all and singular the averments contained therein except she denies that any of the taxes therein referred to are a lien on, or constitute a condition to the succession to, any property which is not situated in the State imposing the tax.

4. Answering Paragraph 10, this respondent admits all and singular the averments contained therein except that she denies that at the time of the death of the said Edward H. R. Green on or about June 8, 1936, or at any time during the month of June, 1936, the said Edward H. R. Green was domiciled at any place whatsoever within the State of Texas.

5. Answering Paragraph 11, this respondent admits all and singular the averments therein to be true and accurate statements of the amount, value, location and extent of the property of the decedent Edward H. R. Green, in so far as the amount, value, location and extent of the said property are known to her.

6. Answering Paragraph 12, this respondent admits that the Federal Estate Tax Return has not yet been filed and that, assuming the correctness of the figures contained in Schedule "A", the calculation of the amount of the Federal estate tax contained therein is correct, and this respondent denies all and singular the other averments contained therein.

7. Answering Paragraphs 14, 15 and 16, this respondent admits that, assuming the correctness of the figures contained in Schedule "A", the calculation of the amount of the respective taxes in good faith claimed by each the State of Florida, the Commonwealth of Massachusetts and

the State of New York is correct, and this respondent denies all and singular the other averments contained therein.

8. Answering Paragraph 17, this respondent admits all and singular the averments contained therein except she denies that the State of Texas is entitled to assess or impose, levy or collect any transfer, succession, inheritance or estate tax upon any part of the estate of the said Edward H. R. Green, except the real estate situated in Texas.

9. Answering Paragraph 21, this respondent admits the averment that the said Edward H. R. Green was born abroad, a citizen of the United States of America, of American parents who were domiciled and resided in Bellows Falls, Vermont, and this respondent denies, upon information and belief, all and singular the other averments contained therein.

10. Answering Paragraph 22, this respondent denies the averment that the said Edward H. R. Green was domiciled at his death in the State of Texas and denies any knowledge or information sufficient to form a belief as to all and singular the other averments contained therein.

11. Answering Paragraph 25, this respondent admits all and singular the averments contained therein except she denies that the State of Texas is in any wise entitled to any transfer, succession, inheritance or estate tax upon any part of the estate of the said Edward H. R. Green except the real estate situated in Texas, and further denies that the State of Texas has any lien upon any part of the estate of the said Edward H. R. Green, except the real estate situated in Texas.

12. This respondent has now answered the Bill of Complaint of the State of Texas and now stands ready and willing to offer her proof as to the domicile of the said Edward H. R. Green for the purpose of the taxation of the transfer of his intangible personal property at death and hereby proffers the same, and further offers to do all such equity as this Honorable Court shall require.

WHEREFORE, this respondent prays that this Honorable Court now take proof as to the domicile of the said Edward H. R. Green for the purpose of the taxation of the transfer of his intangible personal property at death and thereupon determine and adjudge that the State of Texas was not the domicile of the said Edward H. R. Green at the time of his death for that purpose, and further determine and adjudge which, if any, the State of Florida, the Commonwealth of Massachusetts, or the State of New York was the domicile of the said Edward H. R. Green for the purpose of the taxation of the transfer of his intangible personal property, and for such other and further relief as to this Honorable Court may seem just and proper.

HARRISON TWEED,
TIMOTHY N. PFEIFFER,
Attorneys for the Respondent Hetty Sylvia Ann Howland Green Wilks.

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Vol. I

Supreme Court of the United States

OCTOBER TERM, 1938

No. 11, Original

STATE OF TEXAS, COMPLAINANT,

vs.

STATE OF FLORIDA ET AL., DEFENDANTS

REPORT OF THE SPECIAL MASTER

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 11, Original

STATE OF TEXAS, COMPLAINANT,

vs.

STATE OF FLORIDA ET AL., DEFENDANTS

REPORT OF THE SPECIAL MASTER

ERRATA

1. Page 21—11th line from the bottom—change "$200,000 to $1,200,000" to read "$1,450,000 to $2,200,000".

2. Page 29—3rd line from the bottom—change "1918" to read "1910".

3. Page 38—3rd line in second full paragraph—change "1918" to read "1919".

4. Page 42—10th line from the bottom—change "1915" to read "1919".

5. Page 55—12th line—change "several months" to read "about six months".

Voting, taxation and social interests there 26
Uniformity of declarations regarding legal residence 27

Life and activities in New York, 1911-1921 28
Places of abode in New York City 31
Voting and taxation there 34

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 4, 1938.

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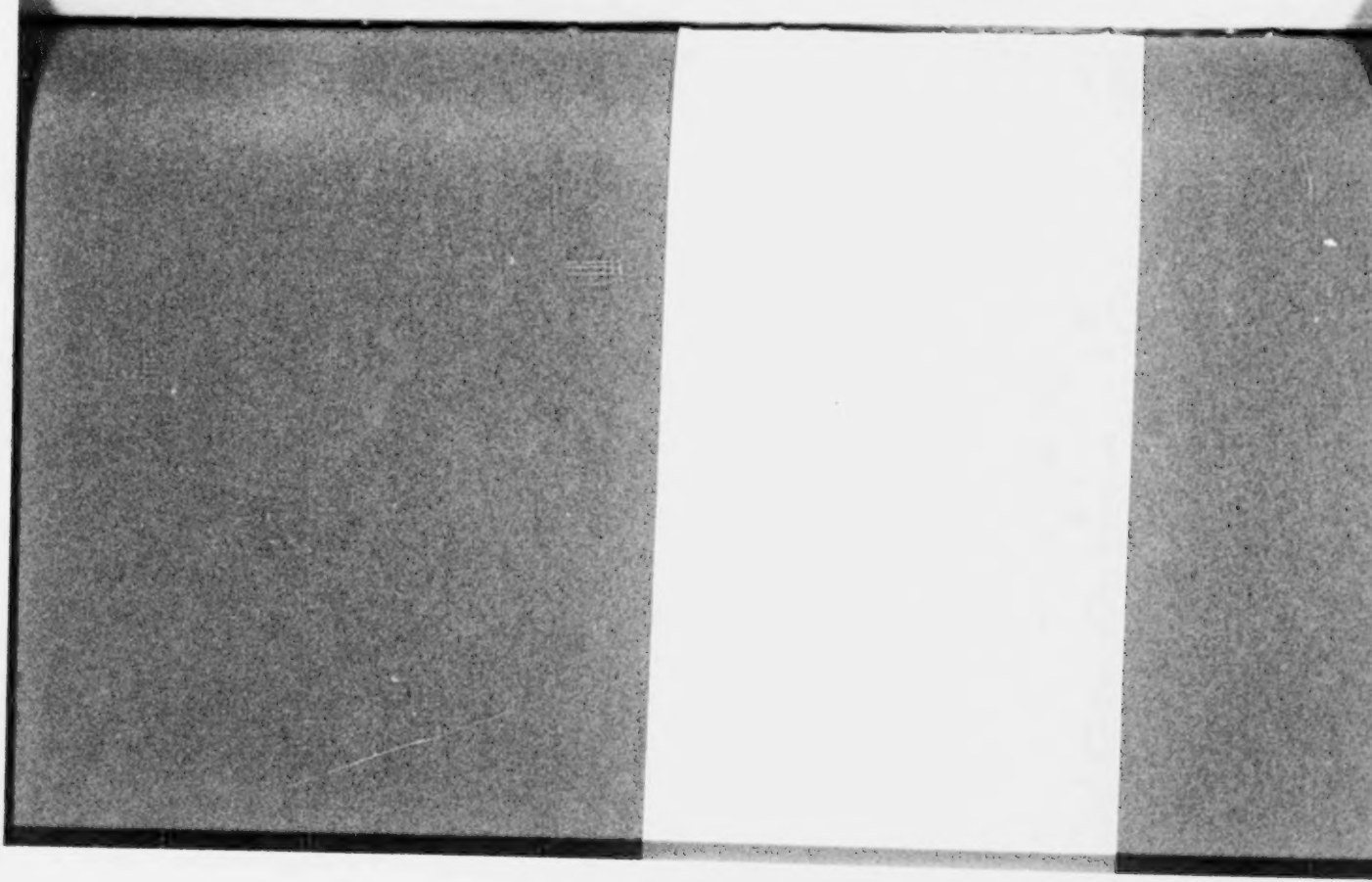

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 11, Original

STATE OF TEXAS, COMPLAINANT,

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STATE OF FLORIDA ET AL., DEFENDANTS

REPORT OF THE SPECIAL MASTER

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 11, Original

STATE OF TEXAS, Complainant

vs.

STATE OF FLORIDA et al., Defendants

REPORT OF THE SPECIAL MASTER

To the Supreme Court of the United States:

On March 15th, 1937, this Court granted the motion of the State of Texas for leave to file an original Bill of Complaint against the State of Florida, Commonwealth of Massachusetts, State of New York, Mabel Harlow Green and Hetty Sylvia Ann Howland Green Wilks to determine the domicile of Edward Howland Robinson Green, who died June 8th, 1936, at Lake Placid, Essex County, in the State of New York, where he was temporarily sojourning, leaving a gross estate estimated at $44,348,500 in value and a net estate estimated at $42,000,000, comprising real estate and tangible personal property located in the States of Texas, Florida, Massachusetts and New York said to be worth over $6,513,500 and intangible property, consisting of stocks, bonds and securities of the approximate value of $37,835,000, the bulk of which was represented by paper evidence within the State of New York and beyond the jurisdiction of the other States mentioned. The defendants were directed to answer and each filed answers, which were received May 24th, 1937 (300 U. S. 643 and 668).

THE PLEADINGS

The Bill of Complaint alleged that the case presented a controversy of a civil nature between two or more States of the United States of America and between a State and citi-

zen of another State within the original jurisdiction of this Court; that at the time of his death; said Green was domiciled in the State of Texas and not in either the States of Florida, Massachusetts or New York; that under the laws of Texas, a transfer, succession or inheritance tax was imposed upon and assessable against the estate of said decedent wherever located in the amount of approximately $5,326,000, which the State was entitled to receive and collect; that under the estate tax laws of the United States, the Federal Government would be entitled to collect a net estate tax of approximately $20,800,000; under the transfer, succession or inheritance tax laws of the State of Florida, said State, claiming to be the domicile, was attempting to levy and collect a tax of approximately $5,335,000; under similar laws of the Commonwealth of Massachusetts, said Commonwealth was attempting to levy and collect a tax of approximately $5,809,000; under similar laws of the State of New York, that State was attempting to levy and collect a tax of approximately $7,132,000; that the defendant, Hetty Sylvia Ann Howland Green Wilks, was the sister and the defendant, Mabel Harlow Green, was the widow of said decedent and respectively asserted the right and privilege of succession to all of the tangible and intangible personal property owned by said Green at the time of his death; that Green left him surviving no child or descendant; no brother or descendant of any deceased brother; no sister other than said Wilks and no descendant of a deceased sister, and no father or mother. It was further alleged that certain judicial proceedings had been instituted after his death in each of the States of Texas, Florida, Massachusetts and New York, as a result of which, on July 28th, 1936, said Mabel Harlow Green was appointed Temporary Administratrix of his estate by the County Court of Kaufman County, Texas, upon her allegation that Green died intestate and was domiciled in said Kaufman County, Texas; that on August 1, 1936, said defendant Wilks filed in the Surrogate's Court of Essex County, New York, a paper writing dated March 28th, 1908, purporting to be the Last Will and Testament of said Green, asked that it be admitted to probate and she be confirmed as the nominated Executrix thereof, alleging that said Green was a non-resident of the State of New York but died there leaving personal property therein situated and that in said proceeding said Mabel Harlow Green and the New York Tax Commissioner en-

tered their appearances; that in this proceeding, a Temporary Administrator was appointed and that the proceeding related solely to the administration of and right of succession to the property of decedent Green and did not involve the tax claims of the sovereign parties to this suit. The Bill further alleged that on August 31st, 1936, said Mabel Harlow Green commenced an action in the United States District Court for the Northern District of Texas at Dallas against said defendant Wilks to determine her rights in the property of the decedent growing out of the existence of a so-called antenuptial agreement which prevented the widow from asserting any claim or interest in the property of the decedent; that on or about October 21st, 1936, upon application of the Commissioner of Corporations and Taxation of the Commonwealth of Massachusetts, a Special Administrator of the estate of said decedent was appointed by the Probate Court of Bristol County, Massachusetts, and he was directed to take possession of and conserve the property, etc. of said decedent within said Commonwealth; that on or about January 4th, 1937, upon application of said Mabel Harlow Green, she was appointed by the County Judges Court of Dade County, Florida, Administratrix of the estate of her husband located within the State of Florida. In its Bill, the State of Texas further asserted that it would not appear in any of the aforesaid proceedings and, upon information and belief, averred that neither the State of Florida, Commonwealth of Massachusetts nor the State of New York would appear in any thereof except to the extent they may have already appeared, as recited in Paragraph 26 of the Bill, and further asserted that no judgment entered therein would have any extraterritorial effect and that the only Court having the requisite jurisdiction to determine in such manner as to be decisive among the parties to the cause the question in which of the four claimant States said Green was domiciled at death was this Honorable Court.

The Bill of Complaint further alleged that under the laws of Texas that State had a lawful and exclusive lien for transfer, succession or inheritance taxes as the State of domicile upon the estate of said decedent, which has been jeopardized and which it will be unable to enforce without the intervention and assistance of this Honorable Court and that the property located within the State of Texas is, for all practical purposes, negligible in amount and insuffi-

cient to pay any tax now due and owing to the State of Texas; that the property in the estate of said decedent is not sufficient to satisfy the claims and asserted liens of the States of Florida, Massachusetts, New York and Texas, respectively, and the Federal estate tax due and owing to the United States, and in the event that said States should obtain an adjudication from some other Court or Courts favorable to their respective contentions as to the domicile of Green, the State of Texas would be unable to satisfy its just claim and lien and it would be deprived of its lawful right to a lien for said sum of approximately $5,326,000.

In their several answers, submitting to the jurisdiction of this Court, the sovereign parties defendant denied that Green was domiciled in the State of Texas and, by way of Cross Bill and Counterclaim against one another, each asserted that it was the domicile of said Green, that under its laws, as the domiciliary State, it had a claim against the estate of said Green and a lien upon all of the property of his estate for transfer, succession or inheritance taxes, which claim and lien it was asserting and proceeding to enforce and that it alone had the exclusive jurisdiction to impose and collect such taxes upon the real and tangible personal property within its jurisdiction and upon the intangible property owned by the decedent at the time of his death wherever located, and further that the question of domicile must be decided before the question of the tax liability could be settled. None of the parties challenged the right of the United States to collect the amount admitted to be due for Federal estate taxes.

The defendant, Mabel Harlow Green, admitted that her husband, at the time of his death, was domiciled in the State of Texas, in the City of Terrell, County of Kaufman, and averred that "under the laws of Texas, where the decedent was domiciled, she was the owner, at the time of his death, of one-half of the property inherited by the decedent between July 10th, 1917 and June 8th, 1936, which one-half was and is free from all Federal and State inheritance, succession or transfer taxes."

The defendant, Hetty Sylvia Ann Howland Green Wilks, in her answer, denied that Green was domiciled at any place within the State of Texas and prayed the Court to determine which, if any, of the State of Florida, the Commonwealth of Massachusetts or the State of New York was the domicile of said Green for the purpose of the taxation of his intangible personal property, etc.

THE ISSUE

The issue raised by the pleadings is: In which of the sovereign States aforesaid was Edward Howland Robinson Green domiciled at the time of his death, June 8th, 1936?

APPOINTMENT OF SPECIAL MASTER

On June 1, 1937, this Court granted the motion for the appointment of a Special Master (301 U. S. 671) and entered the following Order:

"The motion for the appointment of a Special Master, is granted and it is ordered that John S. Flannery, of Washington, D. C., be, and he is hereby, appointed Special Master in this cause, with authority to summon witnesses, issue subpoenas, and to take such evidence as may be introduced and such as he may deem it necessary to call for. The Master is directed to make findings of fact and conclusions of law, and to submit the same to this Court with all convenient speed, together with his recommendations for a decree. The findings, conclusions, and recommendations of the Master shall be subject to consideration, revision, or approval by the Court. The allowances to him, the compensation paid to his stenographic and clerical assistance, and the cost of printing his report shall be charged against and be borne by the parties in such proportion as the Court may hereafter direct. If the appointment herein made of a Master is not accepted, or if the place becomes vacant during the recess of the Court, the Chief Justice shall have authority to make a new designation which shall have the same effect as if originally made by the Court herein." (57 S. Ct. Rep. 935.)

At the preliminary conference in Washington, D. C., in July, 1937, at which all of the parties to the cause were represented by counsel and the United States, though not a party, was represented by its special counsel, H. S. Middlemiss, of Washington, D. C., was appointed official reporter, the procedure was outlined and it was agreed that the hearings should commence at Dallas, Texas, October 10th, 1937, thereafter be held at such points in Texas as might be agreed upon, followed by hearings in New York, Massachusetts and Florida at such times and places as would suit the convenience of the parties, their counsel and witnesses.

Pursuant to this arrangement, hearings were held at Dallas, Fort Worth and Terrell, Texas, in October, 1937, at which most of the Texas case was presented and some evidence given on behalf of the other parties. Adjournment was then taken to reconvene at New York January 10, 1938, and at sessions extending through the remainder of the month further evidence was given by counsel for Texas and counsel for New York and the Commonwealth of Massachusetts presented most of their evidence in chief. Adjournment was then taken to New Bedford, Massachusetts, where, at sessions held the first part of February, Texas, New York and Massachusetts presented further evidence and some evidence was given on behalf of Florida. Because of the engagements of counsel, the hearings were suspended, to be resumed at Miami, Florida, April 10th, 1938, where the sessions were continued from day to day until all evidence was in.

At all of the hearings, the sovereign States were represented by their Attorneys General, special and associate counsel and by their Tax Commissioners, and the United States appeared by special counsel but did not participate in the proceedings—between twenty and twenty-four counsel and officials attended the various hearings. Mrs. Green, through her counsel, took an active part in the hearings in Texas but after her settlement with Mrs. Wilks and release of all interest in her deceased husband's estate, she was dismissed from the case, without costs, upon the stipulation of the parties by order entered herein January 17th, 1938 (302 U. S. 662). Mrs. Wilks was represented throughout the proceedings by her counsel.

Counsel exhaustively prepared and ably presented their respective cases and endeavored to bring out every fact which might aid the Court and have any bearing upon the question at issue without regard to its effect upon their several contentions.

OFFICIAL RECORD, REQUESTS FOR FINDINGS AND SUPPORTING MEMORANDA

Two sets of the typewritten transcript of the stenographic record, in eleven volumes, comprising 9800 pages of testimony and 1484 exhibits, fully indexed, are filed herewith.

At the conclusion of the hearings, counsel announced that they did not insist upon any exceptions taken in the

course of the proceedings to rulings of the Master, and were requested to submit to him by August 1st their respective requests for ultimate findings of fact, with supporting memoranda containing references to their local statutes and decisions. The sudden death of Attorney General Landis and the serious accident which incapacitated Special Assistant Attorney General Cole, shortly after the conclusion of the hearings, made it necessary to extend the date for the submission of requests for findings to September 1st.

Two printed copies of such requests for findings, with supporting memoranda, are herewith filed. They have been very helpful to the Master and carefully considered by him. In so far as the findings requested were supported by a fair preponderance of the whole evidence, they have been adopted; many have been rejected because they contained argumentative or evidentiary matter and some because they were partial and incomplete.

During the progress of the hearings at Terrell, Texas, New Bedford, Massachusetts, and Miami, Florida, the Master and counsel viewed the buildings in which Green had his bachelor quarters and maintained a room at Terrell; the Round Hills Estate at South Dartmouth, Massachusetts, and his residence at 46 Star Island, Miami Beach, Florida. The latter properties were placed in the condition in which they were last occupied by Colonel Green and photographic reproductions of some of the exhibits illustrating the character of the residences in Massachusetts and Florida are attached hereto for the convenience of the Court.

DIGEST OF THE EVIDENCE—APPENDIX A

In order to aid the Court and counsel for the respective parties and save the expense of printing voluminous extracts from the testimony and exhibits, the Master has prepared and files herewith, as Appendix A, two copies of a Digest of the Evidence and Exhibits, containing a summary of the testimony in the language of the witnesses and the important portions of the exhibits. As counsel for Texas state in their memorandum, "there is much in the record of no real materiality or significance upon the ultimate issues * * * there are many incidents and episodes which shed no light upon the question of domicile or

claimed abandonment." Counsel had industriously prepared their cases to cover the span of Green's life from early manhood to the grave and many trivial matters were introduced to show his local activities, attachments, friendships, business interests and habits which bore only a very remote relationship to the issues. Most of the important facts were undisputed, but as varying deductions and conclusions might be drawn therefrom, the Digest has been made much longer than would ordinarily be necessary. All references in the Digest are to the official Transcript of Record and most of the references herein are to pages of the Digest as printed. Indices embracing both the Digest and official Record also are filed herewith.

STATUTES

The local laws relied upon by the respective parties were introduced in evidence and have been copied in the Record at pages 9561 to 9685; D. 399-401. The more important Statutes relating to taxation, liens, etc., are given in the Appendices to the Pleadings.

IMPORTANT QUESTION FOR DECISION

Most questions of domicile are local but frequently have a national or international aspect. In this era of liberal expenditures and high taxation by governmental agencies, when the bulk of individual wealth is no longer in lands, buildings or personal chattels, but in intangible property which may be moved from place to place by migratory millionaires to escape taxation, until death enables the sovereignty having jurisdiction of the estate to assess and collect the taxes which follow domicile,—the questions here involved are becoming increasingly important to the Federal and State authorities. Where, as here, controversies over the right to tax arise between two or more sovereign States, this Court furnishes the only forum for their adjudication.

The determination of the domicile of a decedent as between his legal representatives and the State having jurisdiction of his property at the time of death, is primarily one for the local Courts of the State, but in this case the decedent had places of residence and valuable real and personal property in several different States, and up to the

[Note: Abbreviations—R, record; D, digest; I, indices.]

time of his death consistently claimed a legal residence in one of them, and kept the bulk of his intangibles in another.

The evidence clearly establishes, as the jurisdictional findings show, that the legal demands of Texas, Massachusetts and Florida for taxes exceed the amount of property within their respective jurisdictions and if any of these States, other than the one having jurisdiction of the intangibles, is finally held to be the domicile, it would have to enforce its rights against property of the decedent within the jurisdiction of another State by invoking the aid of this Court. The evidence also demonstrates that to allow each State to determine the question of domicile for itself and seize the property within its jurisdiction, would not only consume the whole of the decedent's estate but precipitate a controversy between sovereignties as to their respective rights and priorities, which the suit seeks to avoid.

A long line of decisions in this Court, culminated in 1932 in the case of *First National Bank* vs. *Maine* (284 U. S. 312, 328), in which it was held that the "shares of stock, like the other intangibles, constitutionally can be subjected to a death transfer tax by one State only"—the State of owner's domicile—except where such intangibles had acquired a definite situs in another jurisdiction. (See also *First Bank Stock Corp.* v. *Minn.*, 301 U. S. 234.) This, however, left each State free to determine the question of domicile for itself upon the facts presented to its local tribunals.

MULTIPLE TAXATION

Questions of multiple taxation have arisen in many cases between estates of decedents and sovereign States asserting their domiciliary right to tax,—such as the *Dorrance* litigation (287 U. S. 660; 288 U. S. 617; 296 U. S. 393; 298 U. S. 678; 298 U. S. 692); In Re: *Pusey's Estate* (321 Pa. 184, 184 Atl. 844; 299 U. S. 572), and *Riley* vs. *Worcester County Trust Co.* (301 U. S. 678),—which this Court was unable to consider for lack of a justiciable controversy between States, the failure to present a Federal question or because of the assertion of an unsubstantial constitutional right.

Many of the States (several of them parties to this litigation) and their taxing officials have undertaken to find

some amicable solution of these questions of double domicile and multiple taxation by submitting themselves to the jurisdiction of sister States as *In Re: Trowbridge's Estate* (266 N. Y. 283, 194 N. E. 756); by authorizing their taxing officials to intervene in the Federal Courts of another State, as in *Riley* vs. *Worcester, supra*, and by invoking the applicability of the Federal Interpleader Act and Declaratory Judgments Act. Arbitration and uniform legislation also have been tried with varying success, as suggested by Mr. Justice Holmes in his dissenting opinion in *Baldwin* v. *Missouri* (281 U. S. 586, 595); but the case at bar presents for the first time a clearly defined controversy between sovereign States, litigating in their own right and not for the benefit of a decedent's estate, which may be of great benefit in the solution of this important problem. Having submitted themselves to the jurisdiction of this Court for a determination of this question of domicile, upon which the right to tax the intangibles is predicated, this Court, in the exercise of its broad original jurisdiction, which may be moulded like that of the Chancery Courts to meet the exigencies of the case, would be able to prevent the multiple taxation which took place in the *Dorrance* Case, *supra*.

(For an excellent discussion of multiple taxation, the decisions of this Court leading up to *Texas* vs. *Florida*, et al., and the *Dorrance* litigation, see article of Francis C. Nash in the Georgetown Law Journal for January, 1938, Vol. 26, No. 2, pp. 288-342).

JURISDICTIONAL FACTS

The following jurisdictional facts, requested by the parties, are found to be established by the evidence:

The decedent, Edward H. R. Green, died at Lake Placid, New York, on the 8th of June, 1936. He was born in London, England, August 22, 1868, a citizen of the United States, of American parents who were domiciled and resided in Bellows Falls, Vermont. At the time of his death, Green was a citizen and resident of the United States.

The State of Texas, State of Florida, Commonwealth of Massachusetts and the State of New York are sovereign States of the United States of America, each claiming that at the time of his death Green was domiciled within its territorial limits, and that it is entitled to collect out of his estate a succession, transfer, inheritance and estate tax on the basis of such domicile.

Mabel Harlow Green, originally named as a party defendant in this cause, is the widow of said Green. Pursuant to a stipulation of the parties hereto showing that she had released all of her interest, if any, in the estate of said Green, the Bill of Complaint herein was dismissed as to her, without costs, by order of this Court entered January 17, 1938.

The defendant, Hetty Sylvia Ann Howland Green Wilks, is a citizen of the United States residing in the City of New York, State of New York, and is the sister of Green. Green left surviving him no child and no descendant of any deceased child; no brother and no descendant of any deceased brother; no sister other than the defendant Wilks; no descendant of any deceased sister, and no father and no mother. Green died testate, and the defendant Wilks is the sole surviving legatee, devisee and Executrix named in his Will. By virtue of these facts, including the release by Mabel Harlow Green, the defendant Wilks is entitled to the whole of Green's estate, subject to taxes and expenses of administration.

The value of Green's total gross estate at the time of his death was $40,144,229.73. Valid debts of the decedent at the time of his death aggregated the sum of $912,133.29. Said debts have all been paid. Administration expenses in said estate incurred to January 2, 1938, aggregate the sum of $1,319,760.78 and Executors' and Administrators' commissions to be actually taken by such Executors and Administrators amount to $1,275,000. Estimated administration expenses to be incurred subsequent to January 2, 1938, amount to $500,000. The total amount of such debts and administration expenses is $4,006,894.07, leaving a net estate of $36,137,335.66.

The intangible personal property of the estate had a value at the time of Green's death of $35,831,303.69. (D. 75, 76, 77, 81-87.)

The property taxable by the State of its situs irrespective of Green's domicile is as follows:

In the State of Texas, parcels of real estate having an aggregate value as of the date of death of $2,220, and no tangible personal property of any value situated therein; all other real estate and tangible property owned by Green at the time of his death was situated outside of the State of Texas;

In the State of Florida, real estate and tangible personal property owned by Green at the time of his death and situated in Florida having an aggregate value as of the date of death of $222,276.80;

In the State of New York, tangible personal property having an aggregate value as of the date of death of $1,583,221.82 and no real estate situated therein;

In the Commonwealth of Massachusetts, real estate and tangible personal property owned by Green at the time of his death and situated in Massachusetts having an aggregate value as of the date of death of $2,498,707.42;

In the State of Vermont, an interest in real estate having a value as of the date of death of $6,500, and no tangible personal property of any value situated therein. (D. 75, 76, 77, 81-87.)

All of the paper evidences representing intangible property owned by Green were physically outside of the State of Texas, the Commonwealth of Massachusetts and the State of Florida.

The aggregate value of the shares of stock in and obligations of corporations and associations organized or having a principal place of business in Texas, Massachusetts and Florida, respectively, and of the obligations of persons residing in said States and of the obligations of said States and political subdivisions thereof, together with the value of the real estate and tangible property in Texas, Massachusetts and Florida, respectively, is less than the amount of the tax claimed by each of said States and the amount of such tax claimed by Texas, Massachusetts and Florida, respectively, greatly exceeds the value of the property subject to the jurisdiction of their respective Courts and from which the tax might be collected in any proceeding in said Courts.

At the time of Green's death, the United States imposed an estate tax by statutes, the provisions of which are set forth in Texas Exhibit 317-D (Appendix E of Bill of Complaint), under which provisions the gross amount of the Federal estate tax imposed upon the estate is $22,769,761.61. After giving effect to the credit allowed under said laws for the payment of estate and inheritance taxes to the State or States to which said taxes may be due, up to 80% of the amount due to the United States Government under the Revenue Act of 1926, the total net tax pay-

able to the United States by said estate is $17,520,987.93. All of said tax has heretofore been paid by the estate to the United States.

At the time of Green's death, the State of Texas imposed inheritance, succession, transfer and estate taxes by statutes, the provisions of which are set forth in Texas Exhibit 317 (Appendix A of Bill of Complaint), under which the amount of tax owned by the estate to the State of Texas, on the basis that Green died domiciled within said State, is $4,685,057.73. The State of Texas, by its duly authorized officials, has determined that Green died domiciled within such State, and is asserting a lien for said amount upon the intangible property of the estate wherever located, as provided by said tax laws of the State of Texas, prior to the commencement of these proceedings, said State, in good faith, was preparing to enforce said lien and to collect said tax, and would now be taking appropriate action to that end were it not for the present proceedings.

At the time of Green's death, the State of Florida imposed an estate tax by a statute, the provisions of which are set forth in Texas Exhibit 317-B (Appendix A of Florida's Answer), under which the amount of taxes owed by the estate to the State of Florida, on the basis that Green died domiciled within said State, is $4,663,857.40. The State of Florida, by its duly authorized officials, has determined that Green died domiciled within such State, and is asserting a lien for said amount upon the intangible property of the estate wherever located, as provided by said tax laws of the State of Florida. Prior to the commencement of these proceedings, said State, in good faith, was preparing to enforce said lien and to collect said tax, and would now be taking appropriate action to that end were it not for the present proceedings.

At the time of Green's death, the State of New York imposed an estate tax by statutes, the provisions of which are set forth in Texas Exhibit 317-C (Appendix A of New York's Answer), under which the amount of taxes owed by the estate to the State of New York, on the basis that Green died domiciled within said State, is $5,910,301.80. The State of New York, by its duly authorized officials, has determined that Green died domiciled within such State, and is asserting a lien for said amount upon the intangible property of the estate wherever located, as provided by

said tax laws of the State of New York. Prior to the commencement of these proceedings, said State, in good faith, was preparing to enforce said lien and to collect said tax, and would now be taking appropriate action to that end were it not for the present proceedings.

At the time of Green's death, the Commonwealth of Massachusetts imposed a succession or inheritance tax and an estate tax by statutes, the provisions of which are set forth in Texas Exhibit 317-A (Appendix C of Bill of Complaint), under which the amount of taxes owed by the estate to the Commonwealth of Massachusetts, on the basis that Green died domiciled within said Commonwealth, is $4,947,008.59. The Commonwealth of Massachusetts, by its duly authorized officials, has determined that Green died domiciled within such Commonwealth, and is asserting a lien for said amount upon the intangible property of the estate wherever located, as provided by said laws of the Commonwealth of Massachusetts. Prior to the commencement of these proceedings, said Commonwealth, in good faith, was preparing to enforce said lien and to collect said tax, and would now be taking appropriate action to that end were it not for the present proceedings.

The State of Vermont neither claims nor asserts that Green died domiciled within such State, nor claims inheritance, succession, transfer or estate taxes on the basis of such residence. The amount of tax payable to the State of Vermont in respect of the property situated therein, on the basis that Green died a non-resident of said State, is $325.00.

The Federal estate tax and the aforesaid claims for estate, transfer, succession and inheritance taxes of the States of Texas, Florida and New York and the Commonwealth of Massachusetts aggregate $37,727,213.45. The value of Green's net estate is insufficient by the amount of $1,589,877.79 to satisfy said claims. (D. 81-87.)

In the foregoing calculations, the claim of the State of New York that Green was indebted to it on account of personal income taxes for the years 1919 to 1936, inclusive, which, with interest to the date of his death, amount to $920,827.35, was not treated as a valid claim except in calculating the amount of the estate tax claimed by the State of New York. If the claim should be treated as a valid claim for purposes of the other calculations, the deficiency

of the estate to satisfy the tax claims of the various States would be increased and would be greater than said sum of $1,589,877.79. (D. 85.)

This cause was instituted and prosecuted by the complainant, the State of Texas, seeking the protection of this Court of its right to enforce and satisfy the obligation and lien which it claims as the State of domicile of said Green for transfer, succession or inheritance taxes, solely in its own behalf and upon behalf of no other party or person.

By reason of the foregoing claims of the defendant States, and the insufficiency of the estate as hereinbefore found, the rights of the complainant, the State of Texas, and its claim of lien for transfer, succession, inheritance or estate taxes, are now in jeopardy and the complainant is suffering and sustaining and will further suffer and sustain actual pecuniary injury to its said rights and claim, and said State has no adequate remedy save in this Court.

The entry of a judgment by this Court in this case, adjudicating the domicile of Green at the time of his death, will not affect the distribution of his estate nor interfere with the ultimate administration thereof by the State Courts of appropriate jurisdiction.

As averred in the pleadings, none of the States which are parties hereto has become or will consent to become a party to any proceeding in the Courts of any of said States.

The cause presents an actual justiciable controversy of a civil nature between the complainant, the State of Texas, and the defendants, the State of Florida, the State of New York and the Commonwealth of Massachusetts, of which this Court has exclusive original jurisdiction.

LEGAL DEFINITION OF DOMICILE

Counsel for Texas, in their memorandum, say:

"Texas has no statute or statutes, of general application, defining domicile. The case is determined generally by common law principles or by general law; and the law of Texas on the subject is the same as that recognized in other jurisdictions,"

and cite from Texas Jurisprudence, Vol. 15, pp. 707 to 719, as follows:

"In its ordinary acceptation the term 'domicile' means a place where a person lives or has his home. In a strict

and legal sense the domicile of a person is the place where he has his true, fixed and permanent home and principal establishment, and to which, whenever he is absent, he has the intention of returning—or in other language the place in which he has his fixed habitation, without any present intention of removing therefrom. It will thus be seen that two things must concur to constitute domicile: First, residence; and second, the intention of making the place of residence one's home. There must be conduct accompanied by intention. It follows that in the strict significance of the term 'domicile' a person can be domiciled in but one place.

"* * * While a person who is *sui juris* may change his domicile as often as he pleases so to do, an established domicile is never gone until a new one has been acquired *facto et animo*. Where a person leaves the state in which he has had his domicile with the intention of acquiring a domicile in another state, he still retains his original domicile until he actually sets foot in the latter state with the intention of remaining (*animo manendi*). As observed in the foregoing pages, the acquisition of a domicile does not depend simply upon the residence of the party; the fact of residence must be accompanied by the intention of residing permanently in the new domicile and abandoning the former. The act and the intention must concur to enable a person to acquire a domicile.

"If a person leaves his home for temporary purposes, with the intention to return to it, this change of place is not in law a change of domicile. One having acquired domicile does not lose it without removal from it with intent not to return. Domicile remains unaffected by any temporary residence abroad, and is not changed until a new one is formed by settlement in the new place with the intention of there remaining at it as home."

Evidently the Texas case and the findings of fact requested by her counsel were prepared with this local law of the State in mind. The evidence for Texas traces Green's life from 1892, when he went to Texas, until his death at Lake Placid, New York, June 8, 1936, for the purpose of showing that his domicile of choice first established in Texas when he was twenty-four years of age was never thereafter abandoned, although at the time of his death he had a residence at Round Hills, South Dartmouth, Massachusetts, another at 46 Star Island, Miami Beach, Florida, and a non-house-

keeping apartment in the Sherry-Netherland Hotel in New York City.

Counsel for the defendants insist that the solution of the problem depends upon a study of Green's relation to these different places of abode and in their respective memoranda they apparently rely upon the definition of "home" as distinguished from residence or dwelling place in the *American Law Institute's Restatement of the Law of Conflict of Laws*, Sec. 13, p. 24, where "home" is defined as

"a home is a dwelling place of a person, distinguished from other dwelling places of that person by the intimacy of the relation between the person and the place"

and that helpful factors to be considered in making such a study are:

"c. *Factors important in determining home.* In determining whether a dwelling-place is a person's home, consideration should be give to:

1. Its physical characteristics;
2. The time he spends therein;
3. The things he does therein;
4. The persons and things therein;
5. His mental attitude towards the place;
6. His intention when absent to return to the place.
7. Elements of other dwelling-places of the person concerned."

In the presentation of their evidence and in their several requests for findings, the defendants have emphasized these factors for the determination of "home."

The defendants all proceed upon the theory that what happened prior to the time when Green moved into his several places of abode is not material and only of historical interest and that the place where he had his principal, predominate habitation and permanent home at the time of his death was his domicile regardless of the past, citing Secs. 13, 14 and 15 to 25 of said Restatement of Conflict of Laws, Beale's Conflict of Laws, V. 1, Sec. 19.2, and other authorities.

Counsel for Florida, in their memorandum, quote from the leading case of *Smith* vs. *Croom*, in the Supreme Court of the State of Florida (7 Fla. 153), where that Court, after citing with approval Phillimore's Law of Domicil, p. 18:

"Domicil answers very much to the common meaning of our word home, and where a person possesses two residences, the phrase 'he made the latter his home,' would point out that to be his domicil,"

comments,

"We like this conception of the word home * * * It is the word whose essential meaning comes up fully to our idea of domicil. It is a word which admits not of qualification. To speak of a permanent home is to perpetrate a tautology—to speak of a temporary home is to involve a contradiction of terms. It is a word which finds its true interpretation in the instincts of our nature. It is a word the full meaning of which is of universal appreciation; it is understood alike by the degraded savage and the classic Greek—by the Republican serf and the refined Roman. Wherever that spot is found there the law fixes the domicil of succession, it matters not whether that be upon the wasted hills of the 'North State' or on the virgin plains of the 'land of Flowers'.—The determination of that locality is the subject of evidence, and that evidence must establish two points—first an actual residence, and secondly the deliberate intention to make it his home, in the acceptation in which it is used in the foregoing citation."

Counsel for New York, in their memorandum, after citing the Restatement of the Law of Conflict of Laws, give a very concise summary of the leading authorities on the subject of domicile, pages 10 to 18. See also Bouvier, "domicil."

The Master has not adopted either method of analysis exclusively but has followed both and finds they lead to the same result.

In most cases of domicile many factors are present which are helpful in reaching a conclusion, but as the following recitals of fact illustrate, here they confuse rather than clarify the issue. Most of the facts are undisputed and it is the deduction from such facts that causes difficulty and gives rise to controversy.

FINDINGS OF FACT

Ancestry and Education

Edward Howland Robinson Green was born at the Langham Hotel, London, England, on August 22nd, 1868, the son of Edward Henry Green and Hetty Howland Robinson Green (née Robinson). His parents were both domiciled at Bellows Falls, Vermont, where Edward Henry Green died on March 19th, 1902, and where he was buried.

On both his father's and mother's side, Green was of Colonial ancestry; his mother's ancestors—the Howlands—had settled in New Bedford, Massachusetts, and acquired extensive land grants in the adjacent Town of Dartmouth in the 17th Century, of which about 130 acres were inherited by Hetty Green. She was born and raised in New Bedford and her nearest relatives were there and in South Dartmouth. The fortune which she had inherited from her Howland and Robinson ancestors had its origin in the whaling industry of New Bedford and at the time of her death in 1916, it had grown to $67,000,000 and under her Will became the property of her surviving children—her son, Edward H. R. Green, and her daughter, Sylvia Ann Howland Green Wilks.

Green's education was obtained in the public schools of Vermont and New York, and in the years 1886 and 1887 he attended Fordham College, New York. Later, he developed by private study a wide fund of scientific information. His tastes were not artistic or literary, he had an excellent memory, a flair for experimentation and manifested a keen interest in astronomy, geology, electricity, photography, radio and X-ray, established an elaborate physical laboratory at Terrell, Texas, which he subsequently gave to a school at Denton, Texas, constructed an observatory on his house in Dallas and made many improvements in railroad transportation. At Round Hills, Massachusetts, he conducted alone and with the Massachusetts Institute of Technology various investigations and experiments for radio communication with airplanes, long distance photography, television, moving pictures, fog dissipation and aviation.

Personal Characteristics

In his prime, Green was six feet four inches tall and weighed nearly 300 pounds. At the age of twenty-one, his left leg was amputated above the knee as the result of an

accident in youth and thereafter he used a cork leg. Notwithstanding this handicap, he was strong, robust and energetic until November, 1921, when he suffered an acute traumatic arthritis in the knee of his right leg, which thereafter greatly interfered with his movements. He was always interested in outdoor sports and amusements; in Texas, he had the first automobile and encouraged racing, participated in minstrel shows and dramatics, aided in the organization of a military company, and organized a baseball and fishing club. In New York, he was fond of attending the theater and baseball games until incapacitated, and in Massachusetts and Florida, took an active interest in yachting and boating, owned a number of boats, and gave trophies for water sports.

While personally modest and unassuming, he enjoyed publicity and did things in a grandiose way. He joined clubs, societies and social organizations in every community where he dwelt but never attended them. He cared nothing for society and never went to social functions; his preference always was for the "man in the street" and for society *en masse*. He mixed largely with local residents of the places where he lived and made himself very popular, was always jovial and genial, democratic and public spirited. His close friendships were those formed in the early days in Texas. He had inherited from his New England ancestors a fondness for the water and seashore, and throughout his life he was also intelligently interested in things horticultural and agricultural, established an experimental farm and floral company in Texas and surrounded his places at Round Hills and Star Island with thousands of roses and rare plants.

He had no religious affiliations but contributed substantial sums to charitable organizations wherever he happened to be. He made large contributions to the Massachusetts Institute of Technology at Cambridge, Massachusetts, for scientific research and to Wellesley College in Massachusetts and St. Mary's Girls School at Peekskill, New York, jointly with his sister, Mrs. Wilks, as a memorial to their mother. In his latter years, he enjoyed the society of young girls and between 1919 and the time of his death, he had a number of protegées, most of whom were daughters of old Texas friends and of acquaintances in Massachusetts; sent them to private schools and colleges; had them spend a portion of their vacations with him and his wife at Round Hills, and supplied them with clothing, jewelry and automobiles and carried on an extensive correspondence in which he kept

himself advised of their progress and gave them much good advice. He was familiarly known to them as "Uncle Ned."

Acquisition and Accumulation of Wealth

In his latter years, when physical infirmities and illness restricted his activities and he was compelled to spend much of his time indoors, he developed many hobbies, became a collector of rare stamps, and later of rare coins and currency, and jewels and at the time of his death had in his apartment in New York, in the banks of New York and in the vaults at Round Hills collections valued at nearly $4,000,000 (75-76). He usually travelled with 28 trunks containing his miscellaneous collections and at his Round Hills and Star Island homes had an immense number of jig-saw puzzles and moving picture films.

Aside from his railroad activities in Texas between 1892 and 1911, he was never in any active business or devoted to the making of money, and although maintaining an office in New York City, he relied largely upon an efficient manager and never visited this office after his serious illness in 1921. His large fortune was the result of inheritance, tax avoidance and income accumulation. While in Texas, he was largely dependent upon his mother for support and upon coming to New York in 1911, his mother gave him stock in one of her Holding Companies worth about $500,000. When he inherited his interest in his mother's estate after her death in 1916, he was 48 years old and unmarried. Under her Will, he became entitled to the residuary estate of his Grandfather Robinson, which was worth about $4,500,000, and to the income from one-half of his mother's residuary estate, which was kept in trust for a period of ten years after her death, and if he survived, to one-half of the estate outright. This one-half interest in 1926 had a value of about $33,000,000, and his income from 1917 on was from $200,000 to $1,200,000, and over a period of years averaged in excess of $1,500,000. Substantially all of this income was spent by him for his personal expenses, in the building and maintenance of his costly dwellings, upon his boats, hobbies and experiments, including the radio station, airport and Whaling Memorial at South Dartmouth. During all of this period his Federal income taxes were very large, but aside from these and his real and personal property taxes in the various jurisdictions where he dwelt, and his poll taxes in Texas, he paid no income or personal taxes to any State, and thus, by tax savings and conservative investments, accumu-

lated an estate estimated at over $42,000,000 at the time of his death. (D. 118-157.)

On July 10th, 1917, he married at Highland Park, Illinois, Miss Mabel Emerson Harlow, who had been his companion and housekeeper for many years in Texas and New York. Prior to the marriage, they had entered into an antenuptial agreement by which she released her rights in his estate. There were no children of the marriage and at the time of his death her interest in the estate was confined to whatever rights she may have had under the community laws of Texas as asserted in her answer.

Under his Will executed in 1908, his mother was made beneficiary and upon her death the whole estate was devised to his sister, Mrs. Wilks. The proceedings instituted for the probate of this Will in the Surrogate's Court of Essex County, New York, while the hearings in this case were in progress, resulted in a settlement of the controversy between the widow and sister and a release by Mrs. Green of all claims upon her husband's estate.

Domiciliary Periods of His Life

With reference to domicile, Green's life, after he had reached man's estate, may be divided into three periods: (1) his early manhood in Texas from 1892 to 1911; (2) his business career in New York from 1911 to 1921, and (3) the period of decline and pursuit of health from 1921 to his death in 1936.

The first period when he was engaged in the railroad business in Texas was probably the happiest of his life; the second covers the years when he was called to New York to take up his mother's burdens in the management of her vast estate until her death in July, 1916, the settlement of her estate in accordance with the provisions of her Will, (of which he was Executor and Trustee,) until he was stricken in November, 1921, and the third, or twilight years, when he was unable to pursue the outdoor existence he loved, when he was cut off from his old friends in Texas, unable to take long trips except for health, unable to go to his office in New York City or to give more than a passing attention to business affairs, and when he found himself in possession of an enormous fortune, which he began to spend freely in the erection of beautiful homes at South Dartmouth and Star Island and in the cultivation of his hobbies.

Life in Texas from 1892 to 1911

Texas Midland Railroad

For a few years prior to 1891, Green was in Chicago on his mother's business. In 1892, he went to Texas for the purpose of foreclosing a mortgage held by his mother on a piece of railroad then called the Texas Central, of which he took charge, becoming President, Manager and Director. At the time he took over a portion of the road, its name was changed to the Texas Midland Railroad and its headquarters and shops were maintained at Terrell, Texas, the junction of the road with the Texas and Pacific. The road was 54 miles long, in bad repair and with dilapidated equipment. Green devoted his efforts to the task of rehabilitation, converted it into an independent line and gradually extended it to a connection with other railroads until he had more than doubled its length. He rebuilt the road in a substantial manner and introduced many improvements and innovations such as vestibuled coaches, the first electrically lighted trains, electric headlights, the first gas-electric motor cars, dining service and experimented with an air-cooling system. With the exception of the period of Federal control, he retained close supervision of the road up to the time of its sale to the Southern Pacific in 1928. Substantially all of the stock of the railroad was owned by his mother and transferred to the Westminster Company in 1911. After 1911, the active management was left to the subordinate officers who were close friends of Green and weekly reports were made to him by them wherever he happened to be. At the time of the sale in 1928, it was one of the largest cotton carrying roads in Texas for its mileage. The road, however, was never a financial success.

From 1911 through 1921, Green habitually made two trips a year to Texas, visiting Terrell and Dallas in the Spring to attend an annual meeting of the railroad, and again in October or November to inspect the road, and in alternate years to vote in Terrell at the State and Municipal elections. In some years he made an additional trip. The Spring and Fall visits were at first three or four weeks long and later were reduced to one or two weeks. From 1922 through 1927, he made but one visit a year to Texas, in the first half of the year, and omitted the Fall visit. He

visited Dallas and Terrell for two weeks in 1922 and 1
and thereafter spent only two or three days on each t
to Texas in Terrell and its vicinity, attending the railr
meetings and inspecting the line. On these latter vis
most of his time was spent at Marlin, Texas, receiving m
ical treatment. In 1922, he was in Marlin for treatment
three months and in the years 1924 to 1927, he was there
a month each year. After 1927, when the agreement to
the road was made, he never made another visit to Dal
or Terrell and his only visit to Texas was in 1935 for tre
ment at the Buie Clinic at Marlin.

Domestic Establishments in Texas

In 1897, Green acquired a private car known as the "Lo
Star," which was burned in 1907 and rebuilt as "No. 99
This car was left on a siding at Terrell available for
use at all times until April 1st, 1928. He used it on all
his inspection trips and sometimes lived in it for as mu
as two weeks at a time. It was elaborately furnished, wi
a dining room, kitchen, office quarters, reception room a
state rooms. He travelled extensively in it throughout t
Southwest. From 1896 to 1907, he spent more time in
private car than anywhere else.

Green's first living quarters in Texas were in an unpr
tentious hostelry called the Harris House. Subsequent
about 1894, he moved into a building then known as t
Opera House, where he maintained bachelor quarters in t
"Green Flats," on the second floor of the building, with tw
of his railroad associates, and had his railroad office in t
same building. He also had rooms at the Windsor Hotel
Dallas and about 1896 or 1897, he leased the second and thi
floors of a building at Elm and Garfield Streets in Dalla
which he remodeled into comfortable living quarters. Late
he purchased a three-story building on Commerce Street
the business quarter of Dallas back of the City Hall, t
interior of which he converted and remodeled at conside
able expense. He occupied the entire building, which co
tained twelve or fourteen living rooms, until the buildin
was sold to the Municipality in September, 1911. He als
had political headquarters at the Oriental Hotel in Dalla
After the sale of his Commerce Street Building, Gree
caused one of his friends to rent a room for him in th
home of Mrs. Jarvis, 503 Pacific Avenue, Terrell, for $5.0

a month. The rent was paid for three years and then stopped and the room no longer held for him. He sent to the room a box containing a pair of trousers and a vest but was never seen by Mrs. Jarvis in the house. This room was admittedly taken to preserve his right to vote in Texas. He also had a 200-acre experimental farm near Terrell where there were living quarters which he occasionally used. This was afterwards sold and from 1911 on he did not have a vestige of dwelling place in Texas except his private car which was sold with the road in 1927-28. While living in the car and in his bachelor quarters at Terrell, he had two colored boys as servants and at Dallas, he had a modest but comfortable establishment with three servants and Miss Harlow (afterwards Mrs. Green) as his companion and housekeeper. When he removed to New York in 1911, all of the best furniture in the Dallas residence was packed and shipped there for use in his New York dwelling and his library of books on scientific subjects was given to the Dallas Public Library. When he visited in Texas in subsequent years, he always stopped at the Adolphus Hotel in Dallas or at the Buie Sanitarium in Marlin. Dr. Buie and other friends of his suggested that he purchase a house in Marlin but he never acted upon the suggestion, and at the time of his death his only real property in Texas consisted of some unsalable lots pertaining to the railroad which were appraised at $2200.

Associations and Activities in Texas

Aside from his railroad activities, Green engaged in farming of an experimental nature upon his farm of 200 acres, became a stockholder and director of the American National Bank of Terrell, of the American Exchange National Bank of Dallas, of the Murray Company and other industrial corporations in Texas, and in conjunction with the United States Department of Agriculture and State authorities he experimented for the control of the boll weevil, which was destroying the cotton crops and seriously affecting the railroad traffic; experimented with cottonseed meal for human consumption; with the use of the round bale for cotton; with the terracing and conservation of land against wind and water erosion; with the use of lignite deposits for fuel and used it in the railroad shops, and prospected to some extent along the line of his railroad and elsewhere for oil.

He developed thirteen acres of greenhouses and was one of the first rosarians in Texas, and also engaged in the poultry and pecan culture. He brought the first automobile to Texas and developed auto racing; became interested in aeronautics and organized an aviation meet at Dallas; was active in the formation of the Texas State Fair at Dallas; placed an order for the first airplane to be brought to the Fair; was State Commissioner of the World's Fair at St. Louis in 1904 and assisted in the development of the Texas Centennial by the purchase of anniversary coins and stamps in 1934. He had the first motion picture machine in Terrell and aided in the organization of the Green Cadets and Zouaves, a military company named for him. He subscribed through a bank in Terrell for $5,000,000 of Liberty Bonds during the World War and made a deposit of $250,000 to the order of the First National Bank of Terrell in 1920 although not financially interested in it to save it when a run was anticipated. In 1921, he opened an account for $100,000 in the Security National Bank of Dallas when a run occurred, to save it from failing.

In 1896, he became interested in Texas politics and was elected a delegate from Kaufman County to the Republican National Convention at St. Louis; was made Chairman of the Republican and State Executive Committee at the Fort Worth Convention and served in that capacity for four years and upon re-election, served until 1900; he was the leader of the Green-McDonald faction of the Republican Party and at the Houston Convention in 1906, was nominated for Governor of Texas, but declined upon the insistence of his mother. His faction seated its delegates in the National Convention of 1912, supporting Mr. Taft, and were for Mr. Hughes in 1916 and for General Wood in 1920. Between 1896 and 1900, he controlled the Federal patronage. In 1911 he ardently supported Colquitt for Governor and upon his election, was appointed a Colonel upon the Governor's Staff and served in that capacity until January, 1915. He contributed largely to the National, State and Municipal Campaign Funds, even after he gave up active participation in politics.

Voting, Taxation and Social Interests There

He voted at State and National elections in Texas prior and subsequent to 1911 until 1920 and paid his poll tax entitling him to register and vote until after he was 60

years of age, although under the laws of Texas he was not obliged to pay a poll tax because of his physical infirmity.

He never went into Texas society or entertained in any of his establishments, and aside from his political associates, black and white, his close friends were few but he remained loyal to them throughout his life and kept in close contact with them by correspondence and gifts of jewelry, etc. He said he liked the wide open spaces of Texas, the freedom from conventionality and the sterling character of the people and always remained loyal to his early associates there. In 1923, he created the "Terrell Trust" for several of his protegées, to whose education and maintenance he had contributed for years, and named his friend, Walter P. Allen, of Terrell, and his sister as Trustees. Vacancies in the Trust were to be filled by two of his old Dallas friends and in 1933, after their death, an amendment was made authorizing some one from Texas to fill vacancies. When seriously ill in 1935, he expressed a desire to be taken to Marlin for treatment, and again, in 1936, he asked Dr. Roche, in Florida, that he be taken to Texas but his medical advisers thought a higher altitude would be more beneficial and he went to Lake Placid, where he died.

Uniformity of Declarations Regarding His Legal Residence

With few exceptions, in substantially all deeds, papers and legal documents he described himself as "of Terrell, Texas," and instructed Marshall, his secretary, and Potter, his office manager, and his attorneys in New York, Massachusetts and Florida to always insert in important legal documents Terrell as his legal residence. All of his Federal income tax returns were filed in Texas and the registration of his yacht and numerous boats showed Galveston as the home port. In his Will executed in 1908, in his application for a marriage license in 1917, in the probate proceedings connected with his mother's estate in 1916-18, and in genealogical articles which he signed or authorized he described himself as of Terrell, Texas. In 1922, he declined to consider running for Congress in Massachusetts because he claimed to be a resident of Texas. In 1929, he stated that he would not be available for appointment as Federal Radio Commissioner from New England because he was a rabid Republican, formerly National Committeeman from Texas and only spent the Summer months in

New England. On March 29th, 1935, he testified under oath in Florida, that his residence was Terrell, Texas, with a Winter home in Florida and a Summer home in New Bedford, and in January, 1935, he returned to the Texas Centennial Committee a certificate which described him as of Massachusetts, with the statement "I have never changed my legal residence from Terrell, Texas," and in almost all of his declarations, oral or written, up to the time of his death he insisted that Texas was his legal residence. If mental state alone, as evidenced by declarations, could establish domicile, Green remained a Texan up to the time of his death.

Life and Activities in New York From 1911 to 1921

Green's mother became ill in 1910 and he went to New York about July 21st, 1910, accompanied by his secretary, Walter Marshall, and took quarters at the Waldorf Hotel, where they lived and he conducted his business. He returned to Texas in November, 1910, and told his mother he would be ready to come North whenever needed. He informed his railroad associates that it would be necessary to spend more time in the East because of his mother's advanced age and illness and they would have to manage the Texas Midland Railroad themselves under his supervision. Marshall brought his family to New York and in July, 1911, Green caused all of his household belongings and automobiles to be packed and shipped to New York. Mabel Harlow followed him and they moved to 5 West Ninetieth Street, which was owned by the estate of his grandfather, Edward Mott Robinson. A few months after his arrival in New York, he opened an office at 111 Broadway, where his secretary Marshall stayed until 1913, when he left Green's service, later returning to him after his mother's death. Until her death, Green and his mother maintained joint offices at 7 West Ninetieth Street, where his mother lived and died July 8th, 1916. This building also was owned by the Robinson Estate. After her death, the offices were transferred to 111 Broadway which remained Green's business headquarters until his death in 1936.

Green at that time was possessed of a personal fortune of about $500,000 and after his mother's death, as hereinbefore stated, received in his own right about $4,500,000 from

the estate of his Grandfather Robinson. On July 10th, 1917, Green and Miss Harlow were married at Highland Park, Illinois, and on October 31, 1917, started on a wedding trip for Galveston, Texas, in the yacht "United States," an old lake steamer which he had purchased October 3rd, 1916, enlarged and refitted. On January 17th, 1918, Green and his wife moved from 5 West Ninetieth Street to the Waldorf Hotel, allowing their furniture to remain in the Ninetieth Street house until it was later shipped to Round Hills, Massachusetts. Upon his return, Green remained in New York until June 30th, 1918, and then went to South Dartmouth, where he and his wife lived on the "United States", Green coming to New York for a few days in the middle of each week. They returned to New York in the Fall and spent the remainder of the Winter of 1918-19 there, leaving for Texas in May, 1919. The "United States" stayed at the wharf at Padanaram, near South Dartmouth, during this Winter and was kept fully manned with a crew of 72 men. With the exception of a few short trips, it remained there until it sank August 21st, 1919. Green and his wife stayed at the Tabitha Inn at Fairhaven, opposite New Bedford, until October, 1919, when he again left for Texas. Upon his return, he stopped at the Waldorf during the Winter of 1919-20 until July 1, 1920; spent the Summer with his wife on his boat "Day Dream" off Fairhaven, coming back to New York in October, 1920, leaving for Texas in November and lived at the Waldorf with his wife during the Winter of 1920-21 until May, 1921, when he again went to Texas. From 1918 to 1921, Green spent about two-thirds of his time in New York City.

This period from 1911 to 1921 was the most active of Green's business career. He was managing his own fortune, which had increased until at the time of his mother's death it was approximately $6,000,000, handling his sister's business, assisting his mother with her affairs until her death and thereafter acting as Executor and Trustee of her vast estate, directing the family-owned holding companies, besides supervising the affairs of the Texas Midland Railroad. He became a Director of the Seaboard National Bank July 7th, 1918, and attended meetings with some regularity until the latter part of 1921. Later, he became a Director by successive mergers of the Equitable Trust Company and

the Chase National Bank and was a director of the latter institution at the time of his death. Until 1920, it was his custom to go to his office in the morning, then to the Seaboard Bank, where he had a large chair specially built for him next to that of the President and conducted much of his business, sometimes returning to the office in the afternoon. He also was a Director of the Columbia Trust Company and of the New York Produce Exchange Safe Deposit and Trust Company. Wilbur K. Potter was in full charge of the office, 111 Broadway, his official headquarters and business address, with a complement of bookkeepers and stenographers. Here all accounts were kept, investment information assembled, disbursements made and all records preserved of Green's personal business, his mother's estate and his sister's business and that of the family corporations in which they were interested.

In 1911, the Westminster Company was incorporated under the laws of New Jersey to take over the affairs of Mrs. Hetty Green and Green became President. It was an Investment Company, of which Mrs. Hetty Green owned 51% of the stock and Green the remainder. It did no business for outsiders. After Mrs. Hetty Green's death, its operations decreased and eventually it was liquidated, at the expiration of the period of ten years from her death. The Windham Realization Company was organized under the laws of New York in 1912 for the purpose of foreclosing mortgages owned by Hetty Green. Green became its President and managed its affairs. While still in existence, it is practically dormant. It did no business for the public. Green Estate, Incorporated, was created under the laws of Delaware January 5th, 1927, at the expiration of the ten-year trust established by Hetty Green's Will, to hold intact the assets of her estate, except non-taxable Government, State and Municipal Bonds and some cash. Green and his sister each own one-half of the stock. Stockholders' meetings were held annually and directors' meetings two or three times a year. The business of the Company was principally the collection of interest and dividends and making distributions to its two stockholders. Green was the final arbiter of its affairs and determined its investment policy. It carried very large cash balances and certificates of deposit in New York Banks running into millions of dollars. It controlled no other corporations and did no business

for the public. Green's New York accounts ran all the way from an overdraft to $1,500,000, and the average was between $200,000 and $400,000. All funds for investment were kept in New York City Banks. Green's personal securities were kept in New York City in the National Park Bank, the Seaboard National Bank and in a fireproof, burglary proof safe in the office, 111 Broadway. He also had storage space in the vaults of the New York Produce Exchange Safe Deposit and Storage Company, of which Green was a Trustee at the time of his death. He also was a Trustee in the Columbia Trust Company from 1912 until he declined re-election in 1920 and attended its meetings with fair regularity until 1919. He attended no meetings of the Trustees of the New York Produce Exchange Safe Deposit and Storage Company after January 9th, 1918. Potter testified that Green spent about four or five hours a week at the office prior to his mother's death, that while the properties managed were extensive and varied, few sales were made and there was little business activity at the office; there were no stock transactions and the principal business was lending money on call, mortgage securities and the investment and reinvestment in tax exempt bonds. (D. 118-157.)

During this period, Green was also a member of numerous clubs, associations and societies in New York but never attended their meetings or visited them.

After his illness in November, 1921, all of his activities in New York ceased; the last bank directors' meeting he attended was October 20th, 1921, and he never went to his office, 111 Broadway, after that date and kept in touch with it by visits from Potter or by correspondence.

Green never entertained socially in New York but occasionally gave theater parties to some of his young protegées. Until 1921, he went to baseball games in the afternoon and to the theater in the evening. After 1921, his evenings were spent in his apartment playing games, listening to the radio and working on his stamp collection. He had no close personal friends or associates in New York. The confinement resulting from this indoor life bored him and made him unhappy.

Places of Abode in New York City

The two four-story brown stone front buildings, 5 and 7 West Ninetieth Street, owned by the Estate of Edward Mott

Robinson, Green's grandfather, were in a residential neighborhood in a transition stage just off Central Park West. Upon his arrival in New York in 1911, Green took up his residence in No. 5 and there maintained a domestic establishment with Miss Harlow. The house was comfortably furnished and he installed a new furnace and had an organ and billiard table. The first floor contained a sitting room and dining room, the second the bedrooms occupied by Green and Miss Harlow and the third contained a billiard room and guest room and the fourth servants' bedrooms and a store room. In the basement were the kitchen, servants' quarters and laundry. They had two Japanese servants and a maid and took their meals there. Each had a Pierce-Arrow car and from 1914 to 1918 Green also had a Benz car, all of which were kept on storage in New York City and there registered. His mother visited him there frequently and they had some other visitors. After their marriage in July, 1917, and upon their return from their honeymoon on the yacht "United States," they spent a couple of weeks at 5 West Ninetieth Street and during the latter half of 1917, lived on the "United States" anchored off West Eighty-Sixth Street; after the holidays they moved to the Waldorf-Astoria Hotel, where they occupied an eight-room apartment, consisting of a sitting room, office, a room occupied by a clerk working on the stamp collection and four bedrooms. Green's room was a combined bedroom and office containing a desk. Marshall, his secretary, had his office there. The apartment was comfortably furnished; rented on a yearly basis and after the first year, at a daily rate. Meals were furnished by the Hotel and billed weekly. While living there, Green worked on his stamp collection until late at night and took a great interest in radio. Their friend, Mrs. Mary Stafford, became one of the family circle in May, 1918, and made her home with them from 1918 to 1927. Miss Ruth Lawrence, one of his protegées, spent a portion of her school vacations there and he was there visited by friends from Texas and elsewhere and by business associates, but did no entertaining. They remained tenants of the Waldorf until it was demolished, when they moved to the Sherry-Netherland Hotel, one of the best Apartment Hotels in New York City, where they occupied the twenty-fourth floor in the tower. Their suite there consisted of a dining room, which was used as an office for his

secretary, a large living room, entrance hall, bedrooms, servants' rooms and elevator. The living room overlooked Central Park and opened upon a terrace which was used by Green for sunning. At first he had a lease running for two years from May 1st, 1929, at a rental of $27,000 per annum, which was not renewed, and thereafter the rental was continued on a monthly basis, at the rate of $27,000, until January 1st, 1933, when a reduction was made. It was a non-housekeeping apartment and the rental included regular guest service from the Hotel. Some of the furniture which they had used at the Waldorf was purchased by the Sherry-Netherland for use in this apartment. The apartment contained large safes for his stamps and coins, some chairs and lamps and a few framed pictures and other personal accessories. In general, the furniture and furnishings from the Waldorf suite were brought to the Sherry-Netherland. Several of the former employees at the Waldorf came to the Sherry-Netherland and Green said he wanted to preserve the atmosphere of the old Waldorf. They had no dining room and Green ate at his desk or on a card table. He then had two nurses and a maid and Mrs. Green had a maid; also an unlisted private telephone. He was there visited by many of his friends from Texas and elsewhere and business associates and sometimes entertained them at meals.

His furniture, pictures and furnishings remained in the house, 5 West Ninetieth Street, until 1921, when most of them were moved to Round Hills, Massachusetts. In 1928, the remainder was sent there and the house demolished.

Between 1918 and 1932, he had a number of automobiles for himself and his wife which were registered in New York City and when not in use kept on storage.

In the last three years of his life Green avoided New York because of efforts to serve him in certain litigation against the Directors of the Chase Bank.

During the last ten years of his life, this apartment in New York was used as a temporary sojourning place on his trips North and South and at the time of his death, contained over 100 of his mother's letters, a portion of his stamp collection, his interest in which had been slight since 1927, some clothing of Mrs. Green and a few personal belongings worth less than $1,000.

The tangible personal property owned by Green in New York State at the time of his death was as follows:

Jewels	$482,545.25
Coins	1,338.57
Cash	3,040.00
Stamps	1,095,316.00
Miscellaneous personalty	982.00
Total	$1,583,221.82

(D. 75, 76.)

Voting and Taxation There

Green never registered or tried to vote in New York. In 1916, his name was put upon the Assessment Rolls of New York City and his property appraised at $10,000,000, but upon application of his attorneys and affidavits by Green that he was not and never had been a resident of New York and that his legal residence was in Texas, this assessment was cancelled and no further attempt made to collect a tax on his intangible personal property. After 1919, when New York substituted an income tax for this intangible property tax with a graduated rate applying to the entire net income of a resident, Green never made any income tax return or paid any such tax in New York. (D. 126, 127.)

In 1917, while cruising in New York waters, when Mrs. Green and Mrs. Stafford suggested that he build a home on Long Island he said that he did not want to, as he did not want to pay taxes in New York; later he told them he wanted to build on his mother's place at Round Hills (D. 207).

There is nothing in the correspondence between Green and his attorney, Charles W. Pierson, of New York City, indicating that he ever regarded himself as a resident of New York. When he was advised by his said attorney that he had been assessed $5,000 for personal property in New York City for 1933, and Mrs. Green assessed a like amount, as non-residents, he replied that all he had in New York City was a stamp collection and safes, to him worth more than $5,000; all Mrs. Green had was a radio set and perhaps some cast off clothing (Mass. Ex. No. 330; D. 228).

Massachusetts and Florida, 1921 to 1936

Round Hills Estate, South Dartmouth, Massachusetts

The third and closing period of Green's life—the fifteen years preceding his death—shows not only a lessening of business activity, a desire to escape from the uncongenial environment of New York, and withdrawal from his former associations with Texas, but that his principal concern was his health and he was constantly seeking relief from the ravages of disease by "following the sun" and indulging in hobbies and outdoor activities where the climate permitted.

After his mother's death in 1916 and his marriage in 1917, he was free to establish a permanent home in any locality that he considered suitable, because he then had no attachment to the soil anywhere and was free from restraint. In the month following his marriage, he and Mrs. Green sailed to Buzzards Bay and anchored off Round Hills Farm, a property which Green and his sister had inherited from their mother. As a boy he had spent two Summers there with his mother and sister. It was a seacoast property of approximately 130 acres, located at South Dartmouth, Massachusetts, about eight miles from New Bedford, which had been in the ownership of his Howland ancestors for over 200 years—from the time of the original Indian grants—and was regarded by Green as an ancestral estate. The only structures then on the property were the old Howland homestead and some outbuildings. On this first visit in August, 1917, he determined to develop the property into a great country estate and build there a monumental home. On several other visits that Fall he ordered the clearing of the land, construction of breakwaters, wharfs, water tanks, pumping plant, greenhouses, gardeners' cottages, surveys to be made of adjoining property and had conferences with architects and interior decorators. From 1918 to 1921, the development of this property was his principal occupation and in June, 1919, the foundation of the house was started by Mrs. Green turning the first spadeful of earth. He lived on his yacht "United States" until she sank in August, 1919, and later at the Inn at Fairhaven, and in 1920 on the house boat "Day Dream", watching the progress of the work. In July, 1921, the house was ready for occupancy and Green and his wife moved in.

Green stated that his sister was willing to have him do what he pleased with the property and as they were childless, if he survived he would have the entire ownership and if she survived she would own it as residuary devisee under his Will executed in 1908. Mrs. Green had relinquished her rights by an antenuptial agreement, under which she received a guaranteed income of $18,000 a year. As Green and his sister were the last of their line, Green had a plan, which was never matured, to have the house become a memorial of some kind to the Green and Howland families. The house was designed and constructed so that it might be converted into an institution but was designated on the plans, equipped and furnished as a spacious residence, with every household convenience, and was used as such from the time he moved into it until his death.

The Round Hills property which passed under Mrs. Hetty Green's Will was a triangular tract with sandy shores jutting into Buzzards Bay. It was mostly wooded and uncultivated farm land on which was the old Howland homestead, some outbuildings and a small family graveyard containing two members of the Howland family. Between 1918 and 1920, Green purchased about 140 additional acres and later purchased two more parcels. In 1925, he conveyed about four acres to Whaling Enshrined, Inc., a corporation which he organized, but with this exception retained the whole estate of about 270 acres up to the time of his death. The estate comprised a bathing beach, a piece of woodland, some farm land, an extensive lawn with shrubbery, etc. He also acquired some wharf property about a mile distant at Padanaram as a headquarters for his boats and built a machine shop, floating dock, etc. Between 1917 and 1921, in addition to the house, Green constructed half a dozen cottages and had a "hotel" for employees, numerous farm buildings, garages, greenhouses, bath houses, pier and water tank and built jetties and retaining walls to prevent erosion and planted thousands of roses. Later, when he extended his activities, he built swimming pools, tennis courts, radio broadcasting stations with towers, airport and hangar, an airship dock, brought an old windmill from Rhode Island and embedded in cement a complete whaling ship, the "Charles W. Morgan" which had been sailed by his whaling ancestors, and began to accumulate whaling antiquities. At the time of his death, there were about 60 buildings on the property.

The house was a three-story rectangular structure of granite, with tile roof and Doric portico, with four columns surmounted by a heavy pediment, facing the waters of Buzzards Bay. Along the waterfront was a wide tiled terrace extending around the south wing and terminating in an open loggia overlooking the south beach, the front of which was of glazed tile to permit dancing. Under the portico, the main entrance led into a central hall containing a double mahogany staircase and an electric elevator running from the basement to the third floor. To the right of the entrance were Green's study, the library and a hall leading to the living room which occupied the entire south wing and was about sixty by thirty feet. To the left of the entrance, was the estate office and beyond the dining room, approximately forty by thirty feet—beyond this was the breakfast porch, a butler's pantry, the main kitchen and service quarters. On the second floor, Green and his wife had bedrooms, each measuring approximately thirty by twenty feet, with baths and dressing rooms, occupying the entire south wing. Opening off the hallway were a number of guest rooms, each having its own fireplace and bath. On this floor there was also a tea room, fitted with furnishings from the "United States" and the apartment of Green's secretary. The service quarters occupied the third floor. The basement contained an automatic oil heating system installed in 1935, valet's pressing room and a specially constructed vault for the storage of valuables.

The house was not only institutional in appearance but massively built, with walls sixteen inches thick of granite and masonry, interior columns and supporting beams of reinforced concrete and partitions of brick or terra cotta. The roof beams were supported by steel frames resting on the masonry walls and there were an unusual number of outlets for electric lights, etc. The furnishings were elaborate and most of the furniture specially built. Some of the pictures, clocks, etc., had been moved from 5 West Ninetieth Street, New York, and had formerly been in his Dallas homes. A portion of the first floor had mahogany wainscoting and many of the rooms were provided with revolving fans such as Green had seen in Texas, so arranged that they could be used to circulate the heat from the radiators in cold weather.

At this house, Green assembled all of his family possessions and heirlooms, two oil portraits of his mother and

another of his grandfather, Edward Mott Robinson, fine prints and engravings of whaling ships and scenes, photographs of the "Charles W. Morgan," framed certificates of his membership in various historical societies, photographs of the New Bedford house in which his mother was born and of the Captains of the New Bedford "Stone Fleet," and of Green as a Colonel on Governor Colquitt's Staff and mementoes of other incidents in his career.

The library contained a well chosen collection of miscellaneous and scientific books and of many rare volumes on the early history of New England and of the Elizabeth Islands, opposite South Dartmouth, log books and other mementos connected with the whaling industry, and a machine used for stamping medallions with the names of visitors to the "Morgan". In his bedroom were pictures of his mother and of the old Howland homestead, and scientific instruments and paraphernalia connected with the stamp and coin collections. In the vault in the basement, was kept his liquor and the bulk of his collections of jewelry, numismatics and stamps, which he took with him on trips to Florida and Texas and shipped back to Round Hills.

At one time he had a number of small boats, called his "Navy" or "Mosquito Fleet," but sold most of them after the sinking of the "United States" in 1918. The grounds were filled with mementos of the sea. The driveways were bordered with hundreds of yards of anchor chain from the Charlestown Navy Yard and upon the lawn was planted a part of the hull and mast of the whaling ship "Wanderer" which had been wrecked upon the Island of Cuttyhunk nearby.

The household at Round Hills included Mrs. Green, Marshall, his secretary, his bookkeeper and the clerk in charge of his numismatic collection, Mrs. Green's personal maid, Green's nurses and a staff of about 30 servants. Outside of the household servants, he had employed about the place over 50 farmers, mechanics and other employees. Mrs. Stafford, who had made her home with them in New York, lived at Round Hills each year from 1920 to 1927 and several of his protegées spent their Summer vacations there. Most of the outside employees remained there all the year round but after the Winter of 1921-22, a skeleton staff of seven or eight servants was left in the house in the Winter and the remainder went back and forth between Round Hills and

Florida. The house was kept heated throughout the Winter, but the furnishings were covered and protected.

Most of his automobiles with Massachusetts registrations were kept there and when they began moving to Florida, the cars for Colonel and Mrs. Green were taken back and forth and many of them were provided with Florida license plates.

Activities, Interests and Associations at Round Hills

Because of the arthritic condition which developed in 1921, Green used a small electric hand operated car by which he propelled himself around the grounds and later bought a small closed electric car with heating equipment which could be used in cold weather. This car was fitted with appliances for his collections, books and papers and enabled him to be outdoors in all kinds of weather, to give attention to the various activities there.

At Round Hills, Green did not go into society and was indifferent to the Summer residents of Nonquitt and Salters Point, especially after they objected to his radio and aviation field. His guests were limited to some old residents of New Bedford, visitors from Texas and his wards. He enjoyed hobnobbing with farm employees and the local tradesmen of New Bedford and the men engaged in scientific research. He was very popular with the people of the vicinity and kept his grounds open to the public who came by thousands to bathe on his beach and see the whaling ship "Morgan." He made his grounds and boats available for the use of crippled children and supplied all year round bus transportation for girls attending public schools. His daily routine was to have breakfast in his room or with his wards, motor around the estate inspecting the improvements, go shopping in New Bedford, have lunch and dinner with the family and afterwards spend the evening showing moving pictures, playing the slot machines and working until late at night over his stamp and numismatic collections. During the first year he was at South Dartmouth and vicinity he made weekly trips to New York until they were discontinued after 1922. He gave some attention to farming and horticulture as in Texas, had a dairy, raised goats, poultry, etc., and employed about 40 farm hands, half of whom stayed all the year round. His farm supplied the house with vegetables and his greenhouse furnished flowers, but were not profitable.

He maintained an unusual photographic laboratory and made moving pictures of his activities there. In 1922, he became interested in radio, constructed two broadcasting stations and enlarged them in 1925 so that programs could be sent from his station WMAF, called "The Voice From Way Down East," throughout New England and even to Europe, issued a pamphlet describing this station in which he spoke of himself as a descendant of the John Howland to whom the Round Hills tract had been allotted. At his invitation, thousands of people came to hear his concerts and other broadcasts. At the end of 1927, when broadcasting became commonplace, he lost his interest in this phase of radio and devoted his attention to it as a means of communication, etc.

In 1927, his interest became centered in aviation and the use of radio in connection with navigation by air and sea. He placed a number of his buildings and his radio facilities at the disposal of the Massachusetts Institute of Technology, for experimental purposes, in connection with radio communication between the ground and air, direction finding, transmission of radio beams for the guidance of aviators, and in connection with this project he began the same year the construction of a fully equipped airport, with facilities for landing hydroplanes as well as airplanes, obtained licenses to dredge and fill in sections of the waterfront, and constructed a hangar and runway for airplanes. In connection with the Massachusetts Institute of Technology, he arranged with the Goodyear Tire & Rubber Company to supply a blimp for research work and built a blimp dock. This airport was rated A-1 by the United States Government and no landing charge was made. He employed a superintendent and established a school for aviators. In 1929, purchased a flying boat for his wife called the "Miami Maid" which he kept at Round Hills. He studied the subject and could discuss aeronautics intelligently with mechanics upon his daily visits to the airport which was maintained in good condition until his death.

The Round Hills Research Division of the Massachusetts Institute of Technology started in 1925 and continued until his death. It began with a study of radio as aid to navigation and studies were made of the penetration and dissipation of fog as an aid to air navigation. In 1931, experiments were began with high voltage generators for the "smashing" of atoms, etc. Green took a personal interest in these experiments and it was his custom to make daily visits to the work

shop and laboratory. In the relief work during the Vermont flood in November, 1927, and in connection with the sinking of the "Vestris" November, 1928, and signalling to the Graf Zeppelin on her maiden voyage, as well as during the Byrd Antarctic Expedition of 1926-7, this station demonstrated its practical usefulness. Some part of this experimental work was carried on in collaboration with the United States Government. These various facilities cost Green upwards of $1,250,000 between 1925 and 1933, in addition to the money gifts made to the Institute of Technology. Pecuniary donations were discontinued after 1933 but he continued to supply the facilities.

Early in his development of Round Hills, Green began to assemble books, antiquities, etc., connected with the whaling industry in which his forebears had prominently engaged. In 1924 he tried to purchase the "Charles W. Morgan", an old whaling ship which had belonged to his ancestors at one time and finally arranged to have it transferred to Whaling Enshrined, Inc., to which corporation he transferred a part of his shoreland for a concrete berth and dock. Until his death he donated $10,000 to the maintenance of the ship and her crew of a Captain and nine sailors. He collected flags which had been used as signals by the New Bedford Fleet and on anniversaries had them displayed. This ship was kept open to the public without charge and about 125,000 people visited it yearly. In connection with the "Morgan", it was originally his intention to construct a whaling village and museum but this project, while started, was never completed.

Many volumes in his library relating to whaling and maritime industry and Gosnold's Voyage to New England in 1602 were of great rarity. Green had expert advice and gave much personal attention to the collection of these books and to histories relating to the genealogy of the Howlands and the early history of New England, New Bedford and South Dartmouth. In his application for membership in the Massachusetts Society of the Sons of the Revolution and the Society of Colonial Wars, he claimed lineal descent from Massachusetts and Rhode Island ancestors. He also had a tablet in memory of his mother placed in the room of the Massachusetts Historical Genealogical Society.

All of these activities ceased in the last three years of his life but he continued to spend substantially all of his Summers at Round Hills until his death and all of his personal

and intimate belongings remained there. He told Neyland that he hoped to be there when he died (D. 314). His remains were brought there from Lake Placid for the funeral service and Mrs. Green continued to occupy Round Hills for six months after his death.

The cost of the Round Hills house and its furnishings was approximately $785,323.42; of the Round Hills farm $616,127.44 (Mass. Ex. No. 411; D. 267-8). Between 1917 and 1936, Green expended on the Round Hills estate on both capital account and maintenance $6,688,639.55 (D. 268). His assets in Massachusetts at the time of his death were:

Real estate at Round Hills (one-half interest in same)	$103,000.00
Real estate at Padanaram	25,000.00
Jewelry	864,119.00
Coins, medals and tokens (face value $126,409.13)	376,799.64
Paper money (face value $608,013.42)	626,496.18
Gold certificates	33,370.00
Paper money	198,256.00
Stamps	203,132.00
Tangible personalty at Round Hills	63,823.60
Tangible personalty at Padanaram	4,711.00
Total	$2,498,707.42

(D. 75, 76, 77-79.)

Voting and Taxation in Massachusetts

He never attempted to vote in Massachusetts, declined to register there or to run for Congress, and never openly acknowledged Round Hills as his legal residence, invariably giving as his reason that he wished to avoid paying taxes there. In 1915, he had his yacht "United States" taken out of the State to avoid taxes. For the same reason he carefully refrained from going into the State until after July 1st and always arranged to leave before the expiration of six months. When notified by the Massachusetts Commissioner of Corporations and Taxation in 1928 of his liability to income taxes as a resident of Massachusetts, Green said that he had his legal residence at Terrell, Texas, and was not at that time prepared to file or pay income taxes to Massachusetts as a resident. At no time did he file an in-

come tax return or pay any income taxes to Massachusetts and after this interview, no demand was made upon him until the formal notice which was received shortly after his death. (D. 88-89, 215-231, 338-340.)

Physical Condition After 1921

Although Green recovered from the acute illness of 1921 and his general health and the condition of his organs remained good, a gradual physical deterioration set in which resulted in extreme anemia requiring many blood transfusions, and removal of his teeth and a severe arthritic condition which was aggravated by the fog and dampness at Round Hills. He was frequently advised by his physicians that he should not remain there so late in the year but always insisted on staying into December except on four occasions in the last fourteen years of his life. During this period he never used alcohol but was addicted to the excessive use of bromo-seltzer which greatly weakened him. In September, 1932, a cardiac condition required him to seek a higher altitude and he went to Lake Placid, New York. From then on his decline was progressive. He was unable to go about alone and was driven by chauffeurs. He continued his shopping trips to New Bedford and spent much time outdoors on his estate accompanied by some of his protegées. He was confined to the house more frequently and his activities were greatly curtailed or discontinued, although his interest survived.

46 Star Island, Miami Beach, Florida

In 1923, Green was advised by his physician, Dr. Pascal, to go to Florida following an operation and blood transfusion in New York. He stopped in hotels in Miami and Jacksonville, purchased the house boat "Pioneer," upon which he cruised; ordered a house boat to be constructed early in January, 1924; returned to Jacksonville and spent nearly two months at hotels or on the "Pioneer." When the boat which he called the "Colonel" was finally delivered, both boats were taken to Miami. In April, 1924, Green purchased a lot on Star Island, Miami Beach, at a cost of $32,000 and ordered some landscaping and the construction of a dock. In January, 1925, he returned to Miami Beach and lived on the "Colonel" at the Star Island dock for about three and one-half months. While there, Green purchased

two adjacent lots for $120,000, one of which contained a Yacht Club which he remodeled into a dwelling for the following season. When he arrived in January, 1926, he had most of this work done over. That year he spent February, March and April on his house boat "Colonel" at the Star Island dock. The house was finally completed and they occupied it for the first time in 1927, remaining for nearly three months, then going to Marlin, Texas, in April. During the succeeding years until his death, Green's average stay in Florida was about four and one-half months, between January and May.

Star Island House

Star Island is an artificial island built by the Miami Ocean View Company by pumping earth from the bottom of Biscayne Bay opposite and within the city limits of Miami, and connected by a bridge near one of the principal Causeways leading to that City. It is elliptical in shape, with a circular driveway in the center leading into the principal estates and contains 46 lots. Green's estate comprised three of these lots containing approximately three acres. The entire area is restricted to residential and the houses are substantial and beautiful.

Green's residence embraces two houses of a low Spanish type, built of reinforced hollow tile and stucco. The main building faces the water and was separated from it by lawn about twenty yards wide covered with palms and exotic shrubbery. From the loggia in the center portion of the building there was a runway to the main dock, which was decorated with stripped poles in imitation of Venetian gondolas. On the inland side were the service quarters, driveway and formal gardens filled with royal and cocoanut palms, etc.

When the work of construction was completed, nothing remained of the Yacht Club but the central living room, which was two stories in height with a bronze staircase leading to the second floor at one end and a fireplace with a balcony or mezzanine above. The ceiling of this room was ornate and beautiful. On both the waterfront and driveway sides were loggias. West of the living room were the dining room, service quarters and double garages. On the east side was a large reception room used for displaying moving pictures, and patio and loggia, a sun room called the "Palm Room" and entrance hall in which was an electric elevator

to the second floor, where the Greens had their bedrooms, sitting rooms and baths. An enclosed passageway and corridor led to the guest suites, three of which were on the inland side and the other faced the waterfront. Each master bedroom had its own bath or shower and some of the suites contained sitting rooms. The windows and doors were placed to admit light and air. The servants' wing was unusually complete and accommodated about 25 servants. All of the main rooms contained numerous electric outlets. Green had his monogram, composed of two Gs interwoven, worked in the tile at the main entrance and in the front of both entrances; also his initial G on the panels of the elevator shaft. The house was constructed of the best materials and designed for comfort and beauty. There was nothing about it to suggest anything but an unusually fine private residence. It was furnished elaborately with specially built furniture manufactured by the Company that had made the Round Hills furniture and by decorators in New York City. The decorations were somewhat similar in style to Round Hills but lighter in color. The rugs were more beautiful and expensive than those at Round Hills and the general effect was more homelike. Adjacent to the room used for moving pictures, was a projector room and a room containing a large number of films, some of which were commercial but many made especially for Green showing scenes at Star Island and Round Hills. Green's bedroom contained some furniture specially designed for his use and much paraphernalia used in connection with his stamp and numismatic collections. The house contained no library, no framed pictures or mementos of his ancestors, or articles of a sentimental nature or personal associations as at Round Hills.

Green sold the "Pioneer" in August, 1925, and after the completion of his house, had the "Colonel" remodeled to look like a Mississippi River show boat and kept it moored at his dock for use as a dance pavilion at Mrs. Green's parties. This boat was sold in 1934. He also had three other boats in Florida—a tug boat called the "Friday", a speed boat, "Mabel G." and the "Isola Stella" (Italian for Star Island). Green himself never used any of these boats after 1929 and in the last few years they were kept tied up at the dock or in storage.

Green also had several automobiles for himself and Mrs. Green containing Florida or Massachusetts license plates,

which were brought from Round Hills to Star Island and sent back at the end of the season.

The grounds at Star Island were planted and cared for by the Exotic Gardens, Inc., which performed similar service for neighboring estates. Green took an interest in his grounds and flowers and it was regarded as one of the handsomest places in Miami.

Most of the remodeling of the building was done in his absence and when there he did not display the same interest in the construction as at Round Hills and seemed to rely more upon his architects, decorators and contractors.

The capital cost of the Star Island residence was $632,110.98 and the total expense account $842,324.66 (D 151-153). At the time of his death, his assets in the State of Florida aggregated $268,418.97, as follows:

Fractional currency	$4,039.70
Four boats	10,500.00
Furniture, etc.	45,237.00
Real estate	102,500.00
Property subject to agreement for deed	60,000.00
Mortgages	46,142.17
Total	$268,418.97

(Tex. Ex. 327; R. 2586-7; D. 75-76, 79.)

Household Establishment and Social Activities in Florida

When the Greens were at Star Island, the household included Mrs. Green, Marshall, his secretary, and a staff of over 25 servants, some of whom were brought from Round Hills for the season and sent back. When not in use, the house was left in charge of a Miami couple as caretakers and the Chief of Police notified. Mrs. Stafford lived with the Greens for several seasons on their house boat and they had few other house guests except old friends from Texas.

Green himself did not go into society or entertain but Mrs. Green did considerable entertaining, giving on one occasion a housewarming party for 300 guests, when the illumination of the gardens and floral display were elaborate. Although a member of various Miami Clubs, Green did not go there. He was very popular with townspeople and tradespeople but aside from a few acquaintances in the City of Miami who were prominent in local affairs, he had

no close friends there. He never conducted in Florida any of the activities or experiments which occupied him in Texas and Massachusetts, and although facetiously calling himself a "cracker," he did not appear to be particularly interested in the history of Florida or in the accumulation of books or mementos relating to its early history.

Aside from his financial interest in the Fogal Dry Dock and Storage Company, where he kept his boats, and a stock interest in some of the local banks, his life in Florida was typical of an invalid seeking health—cruising in the waters of Biscayne Bay and Indian River when physically able to go in his boats; taking daily drives in his automobile with a chauffeur; shopping expeditions in the adjacent Cities of Miami and Miami Beach; making purchases of diamonds and jewelry, and when confined indoors, working on his coins, currency and latest stamp collections, displaying moving pictures and making jigsaw puzzles (of both of which 46 Star Island contained hundreds of examples), occasionally receiving callers, participating in the water carnivals and stimulating outdoor motor racing by giving trophies. He contributed to one of the Churches but attended none and also made donations to various charitable objects and made moderate contributions to many local institutions. Everything he did indicated a seasonal vacation and relaxation from physical and mental effort. He realized that the "sun was on his back" and tried to make the most of it. He received great benefit from the climate and frequently said it was "God's Country" and enjoyed its advantages and beauties. He told Tucker, an old friend from Texas, "This is my home and I expect to live here the rest of my days," (D. 372) and told others that he would stay all the year round if there were not so many damn mosquitoes.

Voting and Taxation There

Green never registered or attempted to vote in the State of Florida. The system of tax prevailing there called for the payment of annual taxes on the value of real and personal property there situated and in the case of residents, upon all of the intangible personal property of such residents. Green paid no intangible property taxes and on March 31st, 1933, wrote to the Tax Assessor of Dade County that his legal residence was in another State, which statement was accepted by the Assessor and he was told he

would not be subject to tax on his intangibles except on bank stocks there assessable. No effort was made to assess him as a resident.

In 1931 and again in 1933, his friend, Walter Allen, of Terrell, Texas, advised him to change his legal residence from Texas to Florida because of certain pending tax legislation in Texas. After consulting his attorney, Charles W. Pierson, who advised him what legal steps were necessary to make a change of domicile and that as he had a residence in Florida it would only be necessary to make a formal announcement of his intention,—Green did nothing and as late as March 29th, 1935, he testified, under oath, in a judicial proceeding in Florida that Texas was his legal residence. (D. 98, 226-231.)

APPLICABLE PRINCIPLES OF LAW

The foregoing Findings of Fact indicate that the factors usually relied upon in the determination of domicile are here of little assistance.

Green was born in England; reared and educated in Vermont, Massachusetts and New York; in early manhood he adopted Texas as his domicile of choice and lived there for twenty years; married in Illinois and thereafter lived with his wife in domestic establishments in New York, Massachusetts and Florida; maintained a business office in New York for twenty-five years preceding his death; declared in his Will and legal documents and consistently maintained up to the time of his death that Texas was his legal residence; died in New York and was buried at Bellows Falls, Vermont, where his parents were interred, after services conducted at Round Hills, Massachusetts.

The four persons who were nearest to him in life—his wife, his sister, Mr. Potter, his office manager, and Mr. Marshall, his secretary—have been able to give but little aid in the solution of this problem.

Mrs. Green, an original party to this cause, filed an answer in which she asserted Texas to be the domicile of herself and husband. She was represented by counsel at the hearings in Texas and was a party to the probate proceedings in New York, opposing the domiciliary claims of that State. When this New York proceeding resulted in a settlement with Mrs. Wilks, Mrs. Green disappeared from this case and there is nothing in the record to indicate that she

resumed her former Texas domicile as she might have done at any time after her husband's death. On the contrary the evidence shows she remained at Round Hills for six months thereafter. We can only surmise that she may have been influenced in claiming Texas by the advantages which might accrue from the community property laws of that State and that she may have been deterred from returning there by the local criticism which the witness McDonald referred to or because she had found the social environment of Round Hills and Star Island more congenial.

Mrs. Wilks in her answer in this case as well as in the New York proceeding, (where she claimed under her brother's Will in which he declared Texas to be his legal residence) has denied that he was a resident of Texas and through her counsel in this proceeding asserts that his domicile at the time of death was in Massachusetts.

Neither Mrs. Green nor Mrs. Wilks has given any evidence to explain the inconsistency between Green's declarations and his actions or the conflict between themselves upon this issue of domicile.

Mr. Potter, his office manager and the representative of the Green Estate, whose testimony has been relied upon by all of the parties to the case, willingly produced the books, records and correspondence of Green and of his family holding companies, testified that from their first association in New York until his death Green claimed Texas as his legal residence and in his instructions to all at the office insisted that that State be given as his permanent residence in all legal papers. Walter Marshall, his secretary, testified to the same effect; but neither was able to give any intimation of the real intention behind Green's declarations and actions except what may be inferred from his evident desire and frequently announced purpose to escape and minimize taxes.

The desire to keep down taxes may be a perfectly proper reason for making a change of domicile (*McConnell vs. Kelley*, 138 Mass. 372).

Where, as here, declarations and conduct are in conflict, declarations alone do not afford any safe guide in determining the issue, especially where they have been inspired by selfish motives.

Re *Trowbridge*, 266 N. Y. 283;
Re *Newcomb*, 192 N. Y. 250.

These two cases bear many points of resemblance to the case at bar and deserve careful consideration.

When the essential requirements of actual residence and intention, as indicated by declarations, do not agree, it becomes necessary, in order to ascertain domicile, to make a minute inquiry into the habits, character, pursuits, social and domestic relations, business and political affairs and indeed the whole history of the person from his youth to his death,—the conclusion depending upon the weight of all of the evidence and the facts and circumstances in favor or against the conflicting places of residence.

Thayer v. *Boston*, 124 Mass. 132, and other cases,
19 Cor. Jur., Sec. 72, C. 1, p. 435.

Expressions of desire to retain a domicile in one State cannot prevail over the intention to make a new home in another State as manifested by actual removal thereto and manner of living.

Dorrance's Estate, 309 Pa. 151, 163 A. 303.

Conduct is of greater evidential value than mere declarations of intent.

Kennan Res. and Dom. 86;
Beale's Conflict of Laws, 253, 254;
Re *Trowbridge, supra.*

Declarations must, of course, be considered in connection with other facts as an index of intention, written being given greater weight than oral, but they have been termed the lowest species of evidence and are of no value when made for the purpose of creating evidence in favor of the declarant after he has become appreciative of the consequences resulting from a change of domicile.

19 Cor. Jur. Sec. 76, 5, p. 439-440;
Canadian Pacific Railway v. *Wenham*, 146 Fed. 207-8.

In explaining the statutes of Texas relating to the regulation of elections, counsel state in their memorandum (p. 27):

"We may add, appropriately, we think, that while Col. Green habitually exercised the privilege of voting in Texas, Article 2958 had application to him and restricted his right to his residence as defined, namely, to the place where he usually slept at night. When he took up his actual abode

in other States, and no longer had a place of residence in Texas, it is manifest that the standard of this statute not only had no further application to him, but it is obvious that it was incapable of application. Since he had no 'place where he usually slept at night' (in Texas) the test could no longer be applied. The old residence continued to control, just as when he lived in the State."

Counsel had previously pointed out in their citation from 15 Tex. Jur. 708-9, that under the law of Texas two things must concur to constitute domicile: First, residence and second, the intention of making the place of residence one's home.

The undisputed facts clearly show, as this admission of counsel indicates, that after 1911 Green *no longer had a place of residence in Texas.* The domicile of choice which he established in Texas in 1892 and maintained until 1911 was abandoned in fact and his domestic establishment and all of his personal belongings removed to New York. His intention to return to Texas might be presumed while temporarily residing in New York engaged in the conduct of his own and his mother's business, if he had done nothing inconsistent with the intention to return. After his mother's death in 1916, his marriage in 1917 and he had come into the full enjoyment of his fortune and was free from restraint, Green might have returned to Texas and reestablished himself in an actual permanent home there. Instead of doing so, he relinquished his nominal abode which he had obtained by renting a room in the house of Mrs. Jarvis in Terrell, which he never occupied, and in the visits he made to Texas in subsequent years to attend the meetings of his Railroad Directors, to vote, or for the purpose of taking medical treatment, he stopped at hotels or at the Buie Sanitarium at Marlin. After 1921, these visits ceased or were diminished and he visited Texas only for treatment at Marlin. The suggestion of his friends that he purchase a house at Marlin and take up his residence there met with no response from him. Instead of returning to Texas, almost immediately after his marriage he went to Round Hills, Massachusetts, where he and his sister owned what he regarded as an ancestral tract of land, purchased additional land and there proceeded to erect a palatial home which was completed and occupied by him in 1921.

During the interval between 1917 and 1921, he spent much of his time at South Dartmouth superintending the building operations.

Thus, we have the actual abandonment of the Texas domicile of choice and the actual acquisition of a new home in Massachusetts. Undoubtedly residence unless combined with intention cannot effect a change of domicile but where the declarations are self-serving or made with intention to deceive, they will be disregarded and the conduct of the party alone govern. After 1921, Green's declarations that he had a legal residence in Texas were made to the taxing officials of New York, Massachusetts and Florida for the purpose of escaping taxation in those jurisdictions. As a matter of fact, he had no actual abode or residence in Texas, and in law, had abandoned his former home there. He could not elect to make his home in one place for the general purposes of life and in another place for the purpose of taxation.

Feehan vs. *Tax Com.*, 237 Mass. 169, 171;
Re *Trowbridge, supra.*

As Mr. Justice Holmes said in *Dickinson* vs. *Brookline*, (181 Mass. 195, 196), "when you intend the facts to which the law attaches a consequence you must abide the consequence whether you intend it or not".

National City Bank vs. *Hotchkiss*, 231 U. S. 50, 56.

In *Gilbert* vs. *David*, 235 U. S. 561, 570, Mr. Justice Day said:

"Applying these definitions to the conduct of plaintiff, we have no doubt that the court was right in holding that he had acquired a new domicil in the state of Connecticut. He removed there with his family, and occupied a house to which he held the title. He owned other real estate in Connecticut, inherited from his uncle. He took a letter from his church in Michigan to a church in Danbury, Connecticut. For about ten years he was not back in Michigan, except for a short time, and then for a temporary purpose. The Michigan homestead and much of the furniture used there were sold upon the removal to Connecticut. For more than ten years he resided continuously with his family in the same house in Danbury, Connecticut. While the plaintiff did not vote in Connecticut, as far as the record shows, it is in evidence that he declared to another his intention of becoming a voter

there. To some witnesses he declared his purpose to reside in Connecticut. As against this testimony, it appears that he left his desk with his brother-in-law in Michigan, which he declared was for the purpose of 'holding his residence there.' To some witnesses he declared his intention to live in Michigan, and expressed his preference for that state as a dwelling place. He continued to pay membership dues to orders to which he belonged in Michigan.

It is apparent from all the testimony that the plaintiff may have had, and probably did have, some floating intention of returning to Michigan after the determination of certain litigation and the disposition of his property in Connecticut, should he succeed in disposing of it for what he considered it worth. But, as we have seen, a floating intention of that kind was not enough to prevent the new place, under the circumstances shown, from becoming his domicil. It was his place of abode, which he had no present intention of changing; that is the essence of domicil."

Green, although carefully advised by able counsel, did not have this legal conception of domicile. He was nomadic in his tastes and evidently regarded domicile as something distinct and apart from home or residence. *Home* to him was where he happened to be for the time being with his wife and domestic establishment. In the early days in Texas, it was his bachelor quarters in an old Opera House at Terrell, a converted building in the business district of Dallas or in his private railroad car. In New York, rooms, simply furnished, in an old house owned by his grandfather's estate or in an expensive hotel apartment at the Waldorf or Sherry-Netherland. Later, he made his home on the yacht "United States" or on one of his house boats in Massachusetts or Florida waters, and in the closing years of his life, in palatial homes which he seasonally occupied at Round Hills, Massachusetts, and Star Island, Florida. He told his attorney, Charles W. Pierson, in 1931 that he had no sentiment where his legal residence might be (D. 191). To him *domicile* was a mental state where he could obtain certain political advantages and freedom from taxation. He was not interested in making a home for posterity because he and his sister were the last of their line. He did have some unformulated notion of leaving a memorial to his mother, his sister and himself and the granite edifice at South Dartmouth on the land that had been in his family for generations, surrounded by mari-

time antiquities in which the Green fortune originated, with mementoes suggestive of his whaling ancestors, seemed to him to be the most appropriate memorial he could leave after death and the most permanent home he could enjoy while living.

There is no sufficient evidence to show that Green ever intended to make New York his permanent home. He rejected the suggestion when it was made to him by Mrs. Green and Mrs. Stafford in 1917 or 1918; he made no effort to become a voter in New York after he stopped voting in Texas; he owned no real estate there except what he acquired as a result of the foreclosure of mortgages and paid no personal or income taxes to New York. He had no close friends in that City and did not like the life or the people. After 1921, he was unable to go to theaters or baseball games as theretofore and was compelled to spend his time indoors and adopt hobbies which replaced his outdoor activities. He removed all of the furnishings of his former residence, 5 West Ninetieth Street and all of the early associations with his mother, except a few of her letters, to South Dartmouth. In a sworn statement to the taxing officials of New York, he declared that he was not and never had been a resident of New York. He never went to his office, 111 Broadway, after 1921 and carefully refrained from visiting the City during the last years of his life because of pending litigation. At the time of his death, his apartment in the Sherry-Netherland was under a temporary lease and for many years had been occupied by him for brief periods in the Spring and Fall while *en route* from Massachusetts and Florida.

This domicile actually established in Massachusetts in 1921, notwithstanding the mental reservation of his Texas residence, was not abandoned when he built his Star Island home. He went to Florida on the advice of his physician in 1924 and after living in hotels and on house boats, purchased three lots and built a beautiful home which he luxuriously furnished with everything necessary for his comfort. In Florida, he was able to be out daily in the sunshine and to avoid the chill of Northern Winters and obtained relief from the arthritic condition which was sapping his vitality. Doubtless those who have visited both Round Hills and Star Island would prefer to live at the latter place, where there is every convenience, almost perpetual sunshine and a homelike atmosphere. But under the authorities, the adoption of a changed location or a

subsidiary or secondary home for the sake of health does not constitute the abandonment of the old and the acquisition of a new domicile. His old friend, Walter Allen, of Terrell, Texas, who had been keeping him advised regarding the tax laws of Texas, and his personal counsel, Charles W. Pierson, in 1931 and again in 1933, advised him to formally adopt Florida as his legal residence (D. 192, 226, 229), but he made no attempt to do so; never voted there, never paid any intangible or income taxes in Florida and as late as 1935, in a judicial proceeding in Florida, testified that he was a resident of Terrell, Texas, and had a Summer home at Round Hills, where he spent several months of each year and divided the remainder of the year between New York, Texas and Florida. Doubtless he enjoyed life in Florida, liked the people, frequently said it was "God's Country" but did not attempt to make it his own. He was sent from Florida by his physician, Dr. Roche, to Lake Placid, New York, in his last illness. The Star Island home was closed when he left and the servants sent to Round Hills. His trunks and belongings were shipped there and after his death his remains were brought to Round Hills for the funeral services. To Round Hills was shipped the bulk of his collections of stamps, coins and jewels. Star Island was left in charge of a caretaker and was only visited by Mrs. Green to remove some of her personal possessions.

When a person who has capacity to acquire a domicile of choice has more than one home, his domicile is in the earlier home, unless he regards the second as the principal home.

Beale's Conflict of Laws, Sec. 24.3, p. 189;
In re *Barrow,* U. S. District Court (Mich.) 26 Fed. (2d) 106.

Beale, at page 190, says:

"The true criterion, therefore, for determining the domicil where there are two homes, seems to be the determination of the order of acquisition of the two homes. The one which having been first acquired became a domicil remains the domicil, in spite of the establishment of the new home; and the second home, therefore, cannot be a legal domicil so long as the first one remains an actual home.

* * * * * * *

"A common example of the existence of two actual homes is the case of a person who has at the same time a home

in the country which he occupies during a part of the year and a home in the city which he occupies during the remainder of the year. It has been often urged in such a case that the only home at any one time is the one of these two places which for the time the person is occupying; that he carries his *lares* and *penates* with him, and sets them up for the time being in the residence which he is then occupying."

If, as counsel for the defendants say, we must disregard Green's early history, except in so far as it furnishes a historical background, and determine what was his actual domicile at death by considering which of his three residences was the principal, predominant or permanent home, we arrive at the same end.

Round Hills was not only the earlier home but as the Findings of Fact show, it was the principal, predominant and permanent home when compared with the Star Island residence. A portion of the Round Hills Estate had been in Green's family for many generations; it was within a few miles of New Bedford, where his mother was born and raised; it contained almost all of his *lares et penates* and portraits of his ancestors; he had there assembled, at great expense, mementoes of his ancestors and of the whaling industry in which the Green fortune originated; it was there that most of his interests and activities were centered before illness restricted them; he had invested nearly $7,000,000 at Round Hills as compared with $1,500,000 at Star Island and over a period of years he usually spent five and one-half months there as compared with four and one-half months at Star Island.

Much evidence was given to show that it was designed and constructed to be converted into a museum or memorial of some kind; whereas Star Island was a beautiful private residence. But the monumental character of Round Hills does not detract from its serviceability as a residence and it was occupied as such from the time of its completion until Green's death. Mrs. Green looked forward to the time when she might be left alone and had selected a site and considered plans for a small cottage on the South Dartmouth estate which were never carried out. This massive edifice on the rocks at Newport would be regarded as simply another millionaire's palace but on the sandy shores of

Buzzards Bay it is not in keeping with the Summer cottages nearby. This may be evidence of Green's lack of taste but is no evidence of his intention not to regard it as a home. Throughout the country many large and palatial residences have been converted into institutions and Green may have had this idea in building the Round Hills mansion. The photographs attached to this Report fairly represent both residences. Both were homes but Round Hills was the earlier, predominant and principal home.

CONCLUSIONS

Upon a careful consideration of all of the evidence in the case and the memoranda submitted by counsel for the respective parties, I find that the domicile of Edward Howland Robinson Green at the time of his death June 8th, 1936, in fact and in law, was in the Commonwealth of Massachusetts.

RECOMMENDATION FOR A DECREE

In the light of these conclusions, I think the body of the decree may be substantially as follows:

Upon consideration of the pleadings and evidence in the above entitled cause, the Report of the Special Master and the findings submitted therewith, and after argument by counsel, it is this — day of ——, 1938, Adjudged, Ordered and Decreed that said findings be accepted and that at the time of his death June 8th, 1936, Edward Howland Robinson Green, in fact and in law, had his domicile within the Commonwealth of Massachusetts.

I think it would be appropriate to reserve jurisdiction of the cause for such further orders as may be necessary to carry the decree into effect and also make an equitable allocation of the taxable costs among the parties to the cause.

Respectfully submitted,

JOHN S. FLANNERY,
Special Master.

Hall at Col. Green's Residence Round Hills.

Living Room - Col. Green's

Library at Round Hills
Col. Greene Residence.

NOV 14 1938
CHARLES ELMORE CROPLEY
CLERK

Vol. II

Supreme Court of the United States

OCTOBER TERM, 1938

No. ~~11~~ 7, Original

THE STATE OF TEXAS, COMPLAINANT,

vs.

THE STATE OF FLORIDA ET AL.

APPENDIX A, WITH REPORT OF SPECIAL MASTER

SUPREME COURT OF THE UNITED STATES

October Term, 1938

No. 11, Original

The State of Texas, Complainant,

vs.

The State of Florida et al.

DIGEST.

(All References Are to Pages of Official Transcript of Record)

TEXAS EVIDENCE

At the hearings at Dallas, Texas, commencing Monday, October 11th, 1937, the State of Texas gave evidence by the following witnesses tending to prove:

Ernest Ford Morrow, Vice President of the First National Bank of Terrell, testified that in 1920 Colonel Green, who was not a director or stockholder of the First National Bank of Terrell, on the day following the death of the President of the Bank volunteered to deposit and deposited $100,000 to the credit of the Bank to save a run upon it (17); between 1899 and 1920, Green was very active around Terrell; he was the "Kingfish of Terrell;" he had a greenhouse and experimental farm of 200 or 300 acres there (18-19). Upon cross-examination by counsel for Massachusetts, witness said the amount was $250,000 as indicated in Mass. Exs. 1 and 2 of January 11, 1921, being a letter from the President of the Bank to Green transmitting a copy of the resolutions of the stockholders (23-25); that the deposit was made to the account of his Bank by transfer of funds from the account of Mrs. Hetty Green at the Seaboard National Bank of New York to the Federal Reserve Bank of Dallas (28); witness could only recall seeing Green in Terrell between 1911 and 1920, when he came to attend the meetings of the Texas Midland Railroad and on this occasion when he assisted his Bank (30). Upon cross-examination by counsel for New York, witness said that Terrell is thirty miles east of Dallas in Kaufman County (31);

its present population is about 8,000 or 9,000 (32); Green was regarded as the outstanding citizen of Terrell (33); he was the only millionaire in the country, was interested in the development of the town and community, and if anybody there wanted help they would go to Green and generally get it (33); Green was about six feet four inches in height; he was President of the Texas Midland Railroad (34); he lived in an apartment there—at one time over a store across the street from the Bank (35); the Texas Midland Railroad then ran from Paris to Ennis, Tex., about 93 miles (35).

LAWRENCE WILLIAM WELLS, of Dallas, Tex., a civil engineer, testified that he entered the employ of Colonel Green as assistant engineer of the Texas Midland Railroad May 12, 1896, at Terrell, Tex. (38-9); this Railroad was then in operation from Ennis to Greenville; Green obtained joint trackage rights with the Cotton Belt from Greenville to Commerce and built his own line from there to Paris (39); Green was then living in Terrell, Tex., and witness was stationed at Commerce and would see him about once a month, sometimes oftener during the construction work (40); about the Fall of 1896 Green moved from Terrell to Dallas, and lived in the second and third floors of the building at Griffith and Elm Streets in the business district of Dallas (41); witness made plans for the reconstruction of this building (42); Green ceased to be President and active operator of the Texas Midland at the time of the consolidation with the Southern Pacific lines; during his connection with the Texas Midland he rebuilt it (43); Green was on the road three or four times a week (44); witness was in Green's employ 32 years (44); Green was interested in all activities that looked to the development of Texas (45); about 1907, witness made oil surveys for him from Corsicana to the north end of the Caddo Field in Louisiana (45); also made a survey for his experimental farm and laid out contours for the drainage, fences, barn, residence, chicken and green houses, etc., about 1906-7 (46); this farm was later sold to Allen and McKay (46); the Government was interested in this farm (47); Green was also interested in certain asphalt and paving companies and the Murray Company, manufacturer of gins (47-8); about 1907-8, Hetty

Green, his mother, took ill and Colonel Green talked of going to New York (48-9) and thereafter said we would have to run the road on the money we got out of operations; that he didn't mind borrowing money from her at long distance but did not want to attempt to borrow from her "close up" (49); that Green purchased a three-story building in Dallas back of the City Hall and witness made plans for the elevation of the floors into living quarters; this work was done in a very elaborate and expensive manner (49); witness identified Tex. Ex. No. 1 as a photograph of this building, which became Green's residence and the last place he lived in Dallas; this was about 1907-8; during this period Green was active in the operation of the Railroad and was there nearly every day (51); at first it was in a run-down condition; he began rebuilding it after the Paris extension was completed; he brought the first vestibule coaches to Texas and the first electric-lighted trains; it was the only road in the South with electric headlights on the engine; the road was rebuilt in a first-class manner and at that time put in the best condition of any Texas railroad; after his mother's illness when he went to New York, witness would see Green three or four times a year—twice when he came to Texas for the annual meeting and to vote, sometimes in New York (52); Green finished the reconstruction of the Railroad in the Fall of 1898; he had his private car from the Spring of 1897 until he sold the road, except for a period of twelve or fourteen months when it was being rebuilt after having burned; when it was burned the car was named the "Lone Star" and afterwards the "999" (55); the car had a vestibule and at the observation end a reception room, a stateroom, Green's room, another stateroom, a dining room, kitchen and servants' quarters, with a staff of cook and porters (56); the front and back staterooms had regular Pullman berths, 3 inches wider and longer than the standard, and Green's stateroom had an immense brass bed, because he weighed about 300 pounds and was over 6 feet tall (56-59); after his mother's death, Green came to Texas twice a year, staying about one month on each trip (56); when he did not stay in his car, he stopped at the Adolphus Hotel, Dallas (57); about November 15, 1921, arrangements had been made for an inspection trip of the Greenville to Commerce extension, when Green was taken sick and they had to change his car from Dallas to

St. Louis (57); after this illness, Green said he did not want to bother with anything unless absolutely necessary because he was devoting his time to getting well (58); he was always jovial and good natured; after his illness, he could not get around well except in a wheel chair; after going to Marlin, Tex., he would get a little better and walk with the assistance of a cane and somebody to help him (59, 60); the last time witness took Green over the line in 1927 he picked him up at Marlin and he walked from the hotel to the car leaning on a cane (60); witness never saw him walk unassisted after 1921 (60); Green bought a yacht "United States" about 1917, on the Great Lakes; he had it cut in two, brought to New York, rebuilt and shortened (60); early in 1900 witness supervised the building of the Tarpon Club near Rock Port on the Texas Gulf Coast (61-62); after 1921, he saw Green a number of times at the Waldorf and Sherry-Netherland, New York City (62), and at his business office, 111 Broadway; never saw him at his business office after 1921 (63); witness paid Green's taxes on his Texas property, made out the deeds for sales along the Texas Midland Railroad; the last deed he made for Green was in December, 1932, for a lot at Quinlan, Hunt County, Tex. (63); these deeds always showed Terrell, Kaufman County, Tex. as his residence; if they did not, Green would send them back for correction (64); in a conversation with Green in the American National Bank, now the First National Bank of Dallas, soon after they moved in their new building, witness asked Green why he was so persistent in calling Texas his home, and he threw his feet on the desk, spat on the floor and said "I like it, because down here I do as I please; if I was in New York and was to do this, they would throw me out on my ear—I like the friendliness of these people and the wide open spaces" (65); after his illness, Green's hobbies were his coin and stamp collections (66); he had 17 or 18 trunks of the collection when he moved (67); witness saw this collection at Marlin, Tex., at the Waldorf-Astoria and Sherry-Netherland in New York City and at the Round Hill Farm, Mass. (67); he never saw Green without either books of stamps or coins (68); the only reason given by Green for leaving Texas was his mother was ill and he had to be in close touch with her affairs (68); Green continued to be in touch with the operation of the Texas Midland Railroad and witness wrote him

whenever anything had to be done and after waiting eight or ten days for a reply, he would go ahead as he thought best; when Green came in May and November he would bring all the correspondence with him and go over it with witness (68-9); for 29 years witness received handsome Christmas presents from Green; Colonel Green often talked about his regard for Texas; his remarks were always friendly to Texas and as witness saw it, with the utmost love for the country (69). The Texas Midland was originally 54 miles long at the time Mrs. Green foreclosed a mortgage (73); the first extensions were made in 1894, using a 70-pound rail and ballast of gravel and burnt clay; about 1918, it began to feel the competition with trucks and adopted a pick-up and delivery service (75); Green always insisted on the Railroad being kept up; they had the first gas-electric motor cars, the first cafe service—ideas originated by Green (76). Colonel Green started in 1897 studying certain subjects, had an elaborate physical laboratory at Terrell and witness coached him in natural philosophy, astronomy, geology, etc.; he was a fine student, had a good memory, could read a book and almost repeat it verbatim (77); witness built Green an observatory on the top of the Elm and Griffith Street house in Dallas, where he had a telescope and appliances for checking the weather—thermometers, rain gauges and wind gauges, the equipment used in meteorology and astronomy (77, 78); he afterwards gave the laboratory to the Girl's School at Denton, Tex.; after his illness in 1921, he abandoned his studies (78); the demonstration farm, when purchased, was poor land and Green developed it; after it was sold, some of the greenhouses were moved to the Kaufman Road greenhouse near Dallas, where he had 13 acres under glass (79); Colonel Green brought the first automobile to Texas (80); Green's itinerary was to leave New York about the first of July, go to New York in the Fall on his way to Florida, staying there probably a week, and come to Dallas and afterwards he went to Marlin and stayed there the month of May, with the exception of a day or so on the Railroad (82). On cross-examination by counsel for Florida, witness testified that Green had no railroad experience prior to coming to Texas (85); that he had contacts with Green from the time he met him in 1896 until April 1, 1928, when the road was sold (86); from 1910 or 1911, he only saw him twice a year,

at the annual meeting of the Railroad and when he came to vote in the Fall at the State Election; that the last time he voted was in 1920 (88-9); that Green's activities in Texas were between the time he came to the State and 1911 (90); the demonstration farm was trying to discover a method of combatting the boll weevil which attacks cotton, one of the principal commodities transported by the Railroad (90); Green never operated the chicken or experimental farm after leaving for New York and sold the Greenhouse a year after he left (91-2). Mrs. Green had been his housekeeper from about 1906-7 at the Elm and Griffith Street house and lived there with him (93); the household belongings were moved from Texas (94); soon after going to New York he sold this apartment in Dallas (94); Green had about 300 lots on the Texas Midland, which witness handled and upon which he paid the taxes, etc., after Green left (95); witness frequently saw him in Florida (96); Green went to Marlin to take the mineral baths and treatment from the Buie Clinic (99); Green's last visit to Marlin, Tex., was about 1935 and prior to that 1927 (99-101); the last lot witness sold was in December, 1932 (101). On cross-examination by counsel for Massachusetts, witness testified that Green was always fond of experimentation; he tried an air-cooling arrangement and sprinkler system in railroad cars (103); he was interested in electricity, photography, X-ray machines, Marconi wireless, seismograph and other equipment necessary to study natural philosophy and showed a desire to acquire knowledge on these subjects (104); the first time witness was at South Dartmouth they were experimenting with radio, 20 or 25 men were working with different instruments and Green said he hoped to develop radio so as to sell one to every farmer at a price not exceeding $10.00; Green combined scientific study with humanitarian impulses (106); he had an equipped landing field for airplanes, a hangar and electrically lighted field (107-8); the last time witness was at South Dartmouth was the Spring or Fall before he sold the Railroad in 1927 (111); Green was very democratic, would mix in with farmers, invite them to lunch and supper with him; put on overalls and go through the shop, get on an engine and run it; he was more interested in the society of the average man (114); he talked about his mother before her death, admired her and seemed devoted to her memory (116-117). Witness identified Mass. Ex.

No. 3, dated November 24, 1910, a letter from Colonel Green to his mother offering to come to her whenever she needed him (119). Witness stated that about 1912, he was with Green in Terrell when his right to vote was challenged and Green showed he had paid his poll tax and several of his friends vouched for him, and he was permitted to vote (123-128). The attention of the witness was directed to Mass. Exs. 4, 4½ and 5 regarding shipment to New York of Green's automobiles from Texas in July, 1911 (133-135), and his household goods from Dallas to New York (137-140). Counsel for Massachusetts called the attention of the witness to Mass. Ex. No. 7, dated May 20, 1922, from him to Green in which he used the expression "your Terrell friends are very anxious to hear how you stood your trip home" (143). Witness further testified that on Green's usual November visits to Terrell he would spend from one to three days on his inspection trip and time his visit so as to vote (149); he would not leave the car to spend a night in any building in Terrell (150); that 1920 was the last time he voted (151); after his injury in 1921, in the Spring of 1922 Green made his first visit to Marlin (152); Green attended the annual meetings of the Railroad in the Spring of 1923-4-5-6 and 7 and so far as witness knows was not in Texas again until 1935 (154); that he has no recollection of Green being in Texas in the Fall of 1921 (155); these trips he made to Texas in the Spring and Fall until 1920 were of about two to three weeks or a month duration (158); from 1911, the actual operation of the Railroad was in witness' hands under Green's direction; that during the period of Government operation, he was the only official kept on the job as train master (164); that the Tarpon was a fishing club, which was destroyed by hurricane in 1904 (165); the undeveloped town lots remaining unsold at the time of Green's death were assessed for about $2800 (165); the Green Floral Company was sold after he left in 1911 (168); after 1911, Green had no other business enterprises left except his stock interests (169). On cross-examination by counsel for New York, witness testified that he did not visit Green while he was living in Terrell but visited the Elm and Griffith Street house in Dallas many times; that Green had three servants and a housekeeper, afterwards Mrs. Green (176); when he moved to the Commerce Street house, there was no change in his establishment (177); Terrell then had a population

of about 5,000 in 1896 and about 7,500 in 1911 (177). Between 1896 and 1911, the Railroad was not a financial success (180); when he saw Green in New York in the Fall of 1911, he was living at the Waldorf-Astoria and had a secretary, Miss Harlow's maid and a young lady who was helping with the stamps and coins (181); he had from 17 or 18 trunks for his stamps (183); he continued to see Green at the Waldorf-Astoria from 1911 to 1929 (185). Upon redirect examination by counsel for Texas, witness testified the returns and reports made by the Texas Midland Railroad to the Texas Railroad Commission all showed the residence of the President as "Terrell, Tex." (198); when Green went to New York in 1911, he said his mother was sick and he had to go up there to help out and take care of her business (199), and after that the private car was kept on the line in Terrell and available for Green whenever he wired for it (200); the annual meetings of the Railroad usually were held in the car at Terrell or witness' office in Terrell (202); Green was designated as President until about 1932 (203); Terrell was the headquarters of the Railroad and Green received mail there until April 1, 1928 (204); some time between 1911 and 1916, when the Texas Legislature was contemplating some change in the income tax law, witness, Colonel Green and Allen had a conversation and at that time they were trying to get him to change his residence to Florida and all they ever got out of him was "No" and a shake of his head (206); that in remodeling the Commerce Street house they tore out everything but the floors and rebuilt, and in the Elm and Griffith Street building, Green had two floors under lease and probably the roof (209); that witness registered once with Green in Chicago at the Blackstone Hotel and Green wrote "E. H. R. Green, Terrell, Texas" (210). On recross-examination by counsel for Florida, witness testified that the Star Island home was entirely completed and landscaped when witness was there; it was a large home (215); they were all homes in that vicinity and Green had a landing place for his boat (217); when Green was in Florida, witness addressed him there about everything excepting the weekly Railroad reports which went to his office, 111 Broadway, New York (218). On recross-examination by counsel for Massachusetts, witness testified that the private car was owned by the Railroad Company and not by Green (229). Counsel

agreed that the First National Bank Building in Dallas was opened for occupancy September 2, 1918 (234).

THOMAS E. CORLEY, of Terrell, Tex., testified that he first met Colonel Green the latter part of 1892 or early part of 1893, shortly after he arrived in Terrell after the purchase of the Northeast Branch of the Texas Central Railroad (241). Witness was then connected with a private banking institution called the Harris Bank; Harris was the owner of the Harris Block or Harris Opera House, and Harris had the opera portion of the Building remodeled to suit Green's wishes; a portion of the Building was converted into general offices and the southern portion was arranged in accordance with his plans for living quarters; the northwest corner room was Green's office, the adjoining room his bedroom, adjoining this was another bedroom, then the dining room, kitchen, bath room and hall; he had a cook and two negro boys who served him as porters (242-3); J. B. Tartt, the first auditor of the Texas Midland Railroad, and witness occupied the bedroom adjoining Green's; Green was then about 24 years old and heralded as the youngest railroad president in the United States at that time (244); Green was born in London, England, in 1868, and is buried in the family burial ground at Bellows Falls, Vermont, where his mother and ancestors are buried (245); he died at Lake Placid, N. Y., June 8, 1936 (246); witness lived with him for several years until he gave up his apartment; afterwards he lived at the old Windsor in Dallas (246); then in the upper two floors in the Elm and Griffith Street Building, Dallas, Tex. (247); these rooms were fixed up comfortably but not elaborately as a residence, equipped with dining room, kitchen and sleeping quarters; he had servants there (247-8); afterwards Green purchased the Commerce Street Building east of the Municipal Building in Dallas, which was converted and re-arranged into a place of residence for him in Dallas; he also had a suite of rooms in the Oriental Hotel in Dallas at the time he was connected with the Republican Headquarters (248); his private car was designed to meet his needs and frequently occupied by him; it was parked in Terrell and made available for his use when he so desired (249); Green bought a tract of land

near Terrell and developed it into a farm—the Green Demonstration Farm—improved it extensively and made trips there (249); he occupied his car for living quarters intermittently but very often; there were times when he used it as much as a week or ten days up and down the line; he spent considerable time in the study of astronomy; the original car was burned and re-built; it must have been out of commission six or eight months; this car was available for Green's use at all times up to April 1, 1928 (251); the car had an observation end for his quarters, a reception room, two or three staterooms, Colonel Green's room equipped with a very large brass bed, a dining room, kitchen, a place for the servant, ice boxes, etc.; the car was built originally in East St. Louis by the St. Charles people who built the "Lone Star Special" which was on exhibition at the St. Louis World's Fair (252); up to the time it was burned it was known as the "Lone Star"—the names of both train and car were given by Colonel Green (253). Green was interested in the development of photography, had a very expensive photographic equipment and employed a man in charge of his photographic department, paying him a good salary; he was interested in chemicals, X-ray machines, radio and had an extensive laboratory; the upper portion of a two-story building in Terrell was occupied by Green as an office and known as the laboratory (254); the experimental farm was about a half a mile from the town of Terrell, nearby the railroad, and consisted of about 200 acres; the United States Department of Agriculture sent Dr. Knapp down there and this farm was the initial farm operated under Government supervision as an experimental farm; Green was the pioneer of the movement and visited the farm daily for a long time (255-6); he said it was purely for the benefit of farmers throughout the State and the promotion of their interests; he was interested in their welfare (257); Green was a big man in all respects, mentally, physically and financially (257); witness' very close frienship with him began with his removal to Texas and continued until the sale of the road, after that he saw little of him although their friendship continued (257); after leaving the Bank, witness was Treasurer of the Railroad and afterwards took on the duties of Auditor and Secretary (259); when acquired by the Green interests, the railroad was in a bad state, was known as a "streak

of rust," the roadbed was poor and it had little equipment; it was about 50 miles long running from Garrett, in Ellis County, to Robert, in Hunt County, and when sold to the Southern Pacific in 1928, it was over 125 miles long and first-class in all respects, had been ballasted from one end to the other, had better bridges, first-class equipment and heavy rails (261); the outstanding improvement in equipment was the "Lone Star Special" which was completed in St. Louis as the last word in railroad trains at that time; it had electric headlights, was electrically lighted, had steel underframes (261); Green was the initiator of a process of ballasting with black, waxy mud called burnt gumbo (261); the railroad made no returns on the investment to the owners (262); Green's business activities in Terrell were principally connected with the railroad, of which he was a stockholder and director, and with the American National Bank; he owned stock in the Terrell Cotton Oil Mill at one time and during the War subscribed at Terrell for $5,000,-000 of Liberty Bonds; he also bought city, county and water-works bonds; Colonel Green was not a society man but aided the baseball club and the military company, which was named for him "The Green Guards and Zouvaes;" he also organized and took a leading part in the Terrell Minstrels (263), and identified Tex. Ex. No. 2 as an advertisement of this Minstrel show. When there was a bank panic in Terrell in 1893 or 1907, Green arranged a shipment of currency through his mother from the Chemical National Bank (269); in 1910 and 1911, when he said it was necessary for him to go to New York on account of his mother's illness to attend to her business affairs, they were told to use their best efforts in the operation of the railroad; witness saw Green every day when he was at Terrell and kept in touch with him and knew his whereabouts at all times when he left the State; he saw him on his return always with the exception of the time when he was in Marlin in 1935 (271); after he sold his farm about 1904 or 1907, Green did not come so often to Terrell (272); after 1910 or 1911, he came down twice a year and witness saw him whenever he came—the early part of the year was usually to attend the annual meeting and make an inspection trip of the railroad and in the Fall he came to vote in the Fall election and witness has seen him vote in Terrell (274-5); Green was an ardent Republican, quite active for years in Republican politics,

being a National Committeeman (275); he was taken ill at the Adolphus Hotel, Dallas, about October 15, 1921, and did not make his usual inspection trip of the railroad but went back East; he was in such condition he could not walk and had to be carried in a wheel chair (277-8); after that witness visited him in New York, South Dartmouth and Florida and saw him on his visits to Marlin, Tex.—in both Marlin and Terrell usually and in Dallas frequently (278); his health was poor and he had difficulty in getting around (278); the last time he saw him in 1928 or 1929 was at Miami, Fla.; visited him there twice (279-280); Green told witness on the occasion of one of these visits that "the recovery of his health was the prime object now and he wanted to get well, and he had to be very careful in his movements, and he wanted to do everything that would enable him to recover his health" (280); he stated he had missed the association of his Texas friends very much, it was a source of much regret that he was not able to see his Texas friends as much as he liked due to his condition of health (281); he did not want to be bothered with business or anything that would occasion any worry on his part (282); Green told witness on numerous occasions that his dearest friends were in Texas, he said they were more or less cold-blooded up East and after his money, that he appreciated that his Texas friends were his real friends and not continually harassing him or trying to separate him from his money, that he appreciated their friendship and they were very dear, close, warm, personal friends, with whom he was associated for years (282); witness mentioned a number of these old friends as leaders in the business life of Dallas, outstanding business men, most of them,—many of whom are now dead (283-284); that Green's invariable practice was to register from Terrell, Tex., at hotels and witness recalls definitely that he so registered at the Southern Hotel at St. Louis on one occasion (284); from February, 1903, when he became auditor of the Railroad, until the sale April 1, 1928, with the exception of Federal control, in all reports to the Railroad Commission of Texas and to the Interstate Commerce Commission, he was instructed by Green to put in his address or residence as Terrell, Tex.; the reports were signed by Green personally and were under oath (287-8); Green said repeatedly, on frequent occasions, that his legal residence was Terrell,

Tex.; never heard him say it was in New York or other place than Texas (289); "I would say that he considered Texas his home" (291); Green expressed himself as "very fond of Texas and of Texas people, and he considered them the best friends he had on earth; his best friends—those friendships were formed when he was in his prime" (292); in 1917, after his marriage, on a visit to Galveston, witness was on the "United States" (292); Green was deeply interested in the welfare of witness' two daughters, sent them to college and remembered them on birthdays and at Christmas, was generous and kind-hearted to them and they loved him dearly; he bore the expense of their education without any solicitation from them or witness (295). On cross-examination by counsel for Florida, witness testified when he first became acquainted with him Green was about 24 years old and told him that he had been connected with the Louisville & Nashville Railroad for a time; there was no time when he did not have a knowledge of railroads; he was pretty well equipped when it came to actual knowledge (296-7); after leaving Terrell and coming to Dallas, he finally fitted up quarters in the building that he bought on Commerce Street and continued to live there until he left Texas, with the exception of the time spent in the car (298); the demonstration farm was sold just before the Railroad was sold and Green had made disposition of his other activities (299); after 1911, he came to Terrell, Tex. twice a year, would stay a week, make an inspection trip over the Railroad and return East, sometimes he would come to Dallas to visit among his friends but did not stay any particular length of time (301); at Marlin there were hot wells and baths, sanitariums and clinics; Green was greatly benefitted by the treatment received there; he said it was about the only benefit he received from any source and he came there for this treatment (302); witness did not see him in Texas after he sold the Railroad and did not see him in 1935, when he was there (304); "when he left in 1910, our understanding in talking to him was that he expected us to operate the Railroad without any financial aid from him or his mother" (304); in 1928 witness was a guest of Green at the Star Island, Florida home (305); it was a rather extensive edifice of the Spanish type—a very large spacious home and had a great number of guest rooms, elaborate furnishings, wonderful tapestries and every con-

venience, with typical grounds of houses of that character in that section; the grounds were landscaped and there was a dock for the yacht (307-8); he had automobiles there for himself and Mrs. Green (309); he had his secretary and a young lady who took care of his stamps and several servants—a fully constituted household (310); witness saw him again in 1929; Green was a kindly man who endeavored to make people feel in a good humor (311); those who knew him liked him (312); witness has been with him at the polls when he voted but cannot give dates prior to 1921 (313), but not after his illness (314); Green frequently told witness he considered Texas his home (314); Green and witness were very close friends and discussed many matters of that kind but witness cannot remember just what the occasions were (315); Green spoke of Texas as his legal residence and when reports were made to the Interstate Commerce Commission witness put in what Green said was his legal residence (315-316). On cross-examination by counsel for Massachusetts, witness said that Green had quarters at a hotel in Dallas between the time he gave up his bachelor apartment in Terrell and took up the Elm Street quarters in Dallas; he never saw Miss Harlow there and visited Green very seldom on Elm Street (317); witness was married in June, 1902, and Green came to Dallas prior to that; witness and his wife never called on Green at his Dallas home (318); that he first met Miss Harlow about 1895 or '6 upon a visit to Terrell (318); she was acting as Green's housekeeper at the Commerce Street house and he heard that she was sometimes known as Mrs. Stanton (319); witness visited Green at Round Hill two or three times; Green was interested greatly in radio, had a broadcasting station and was in close touch with the Massachusetts School of Technology, had some students there working at some scientific problem (320); he had an airport planned but not developed when he was there (321); Green was interested in his stamp and coin collections; he had many varied interests (321); the South Dartmouth house is a magnificent structure, it is well built and looks like it ought to last through the ages; witness asked Green why he made it so elaborate—why he built such a magnificent home, and he told him that he and his sister had plans to commemorate his mother's memory in some way—to establish a school or some memorial for his mother; witness thinks it is on the farm of some of his ancestors that came

over on the Mayflower; it is quite a historic landmark (322); he got this opinion from talking with Green; has heard him many times mention that his mother had been brought up from childhood in New Bedford; he always referred to his mother in the dearest terms; she frequently wrote him and witness saw messages from his mother containing endearing messages; she was fond of him and he reciprocated it (323-4); witness identified his letter to Green of July 6, 1921, in which he said "I hope that you are enjoying the comforts of the new home at Round Hill" (329-331-2); witness asked Green why he built such an expensive residence—you can call it home or residence, I do not know how you designate it—why he put so much money into the place that he could not need and witness' recollection is that he said he and his sister had planned to construct a memorial to his mother in some particular way to commemorate her memory eventually—he did not say when (333, 344-5). On cross-examination by counsel for Massachusetts, witness testified he understood from Green that his reason for leaving Terrell for Dallas was to get better accommodations (338-9). Witness identified letter from Green to his daughter, Prudence Corley, dated New York City, November 10, 1921 (Mass. Ex. 11), in which Green said "the trip home was made safely" (352); Green had a library containing a number of scientific books that he gave to the Dallas Public Library at the time he left Terrell (353); he was very much interested in the education of young women in his later years and had perhaps 25 protegees that he was educating, among others, the two daughters of witness, who went to Wellesley College (355); they were then about seventeen or eighteen years old (356); Green bought dresses by the carload and when they were at his house he would let them take their choice; he had dresses, jewelry and other things that he gave the girls on their visits to him; he kept order forms from which he ordered the dresses (358-9 and 362-6); after the sale of the Railroad, witness wrote to Green about an application with a banking institution in which Green was interested, to which Green replied that the only banks in Texas in which he had any interest were the American National Bank of Terrell and the American Exchange National Bank of Dallas, and that he took no active part in the management of either and his interest was nominal (367-8); witness testified that the annual meeting of the Railroad was held

on the second Tuesday of May, which would fix the time of Green's Spring visits; witness could not state definitely he came twice a year after 1921. On cross-examination by counsel for New York, the witness testified that Green was Commissioner of the World's Fair in St. Louis in 1904 and it was about that time he registered in St. Louis (371); to the best of witness' knowledge and understanding, Green spent his Summers at South Dartmouth and his Winters in Florida and during a portion of that time he maintained a suite at the Waldorf-Astoria in New York City, afterwards at the Sherry-Netherland (373); witness understands a man can have a number of homes at the same time but not being a lawyer he is unable to distinguish between temporary and permanent residence (374); Green had a flair for publicity and was doing everything to increase the business of his line and to make friends and may have started the military organization at Terrell with that in view (375). Witness identified N. Y. Ex. No. 1, a card dated August 1, 1916, reading "Kindly change my address to No. 111 Broadway, Room 1104, New York City. Old address: 7 West 90th Street, New York City, N. Y., E. H. R. Green." (378)

Witness also identified N. Y. Ex. No. 2, addressed to him, announcing the marriage of Miss Mabel Emerson Harlow to Edward Howland Robinson Green on Tuesday, July 10th, 1917, at 102 Sheridan Road, Highland Park, Illinois (380). He further testified that the suite at the Oriental Hotel was primarily for political purposes (388-392) and the car primarily for Railroad affairs (389); that he saw Green at the Waldorf-Astoria in New York after 1911 but only remembers that he had a nice suite there (394); never saw him at 5 West 90th Street or the Sherry-Netherland (396); after Green left, the affairs of the Railroad were in charge of Mr. Wells, Mr. McKay and witness, directly under Green, to whom all reports were made (398); witness has seen his collection of stamps, coins and paper money but not the entire collection; that Green derived a great deal of pleasure from it (398-9). On cross-examination by counsel for Mrs. Green, witness stated that Green liked to talk about his Texas friends and on various occasions stated that "he would always consider Texas as his home" (401). On recross-examination by counsel for Florida, witness said Green was interested in automobile races and in the races at Ormond Beach, Florida (403-4); that prior to Green

becoming ill in 1921, he had been very active in a business way, with business ventures, in helping the community where he lived; that after 1921, he stated to witness that his prime object in life was the recovery of his health (404); that on his visit to South Dartmouth, witness asked Green what his purpose was in erecting a building of that character and Green told him that he and his sister had planned, eventually, to leave it either for some girls' institution, or something like that, to commemorate his mother's memory; that along about that time he and his sister had given $500,000 to Wellesley College, and they erected on the campus a hall bearing Mrs. Green's name as a commemoration, and he told witness they had that in view—they had plans, ultimately, but he did not say when, where or how (405-6). On redirect examination by counsel for Texas, witness said he recalled that on the yacht "United States" the words "Galveston, Texas" appeared, in accordance with Green's desire regarding the registration of the boat (408-9). On recross-examination by counsel for Massachusetts, witness testified that Mrs. Hetty Green died July 3, 1916, and these changes from 7 West 90th Street to 111 Broadway, New York, were changes in the office address (411-12).

William Madison McDonald (colored), known as "Gooseneck Bill," of Fort Worth, Tex., private banker, testified that he was President of the Fraternal Bank and Trust Company, of which he was formerly owner (419-20); that he was born in Terrell, Kaufman County, Tex., attended public schools and Roger Williams College and afterwards taught school at various places in Kaufman County; that in 1885 he became interested in the Masons and other fraternal organizations which carried him all over the State into any county where the colored people lived; that he is now 71 years old and became interested and active in Texas politics in 1890; in 1895 he was the dominating member of the Republican Executive Committee (422); (witness further described his political activities) (422-431); that Colonel Green lived in Terrell and witness lived at Forney, twelve miles west of Terrell; that Green paid Mr. Canon $75 for getting him his place as a

delegate to the National Convention; that Green thought witness had asked for $7500 and gave him a check for that amount and when he was told it was only $75, Green tore up the original check and made out a new check for $75 (431); that this made two delegates from Kaufman County, Tex., which was very unusual (432); that Green contributed $1,000 to the Campaign Fund; this was Green's entrance into Republican politics in Texas in 1896 (432); from then until 1928 Green continued interested in politics and the Republican Party, if giving money to carry on the work and running it meant anything, then he was interested (433); witness removed from Forney to Terrell in 1896 at the request of Green, who had been elected State Chairman and wanted him near him (433); they were not able to seat the Texas delegation to the National Convention; in the Summer of 1896, the Republican Party held a State Convention at Fort Worth (434); Green represented Kaufman County in that Convention with witness (440); that there has never been a Republican in Texas more popular than Green (441); at the State Convention at Fort Worth in 1898, Green was elected State Chairman of the Executive Committee (441); in 1900, witness and Green were delegates from Kaufman Congressional District to the Republican Convention at Waco, Tex., in March, 1900 (442); Green was named a delegate to the National Convention in 1890 (443); Green was elected Chairman of the Executive Committee of the Republican Party of the State of Texas in 1896 and re-elected in 1898 and 1900 (450); in 1896, Green was listed in Winkler's Platforms of Political Parties in Texas as the representative of Kaufman County in the 1896 Convention (451), and in the same book he is given as the representative of Kaufman County at the 1898 Convention held at Forth Worth (454); in the faction fight, the faction opposed to the Burns-Ferguson faction was known as the Green-McDonald faction—that is Colonel Green and the witness (453); in 1900, Green was named as a delegate to the National Convention by both factions (454); in the Republican Platform adopted at San Antonio in September, 1900, there was a commendation of the work of Green as State Chairman during the preceding four years which witness had written and in which it was stated "we commend most heartily Mr. Green's administration of party affairs and express the hope that he may yet be in-

duced to reconsider his announced purpose not to be a candidate for re-election and consent to accept another term as State Chairman" (456-7); at the Convention at Fort Worth in 1902, Green was made permanent Chairman (457-8); in 1904, there was a State Convention at Dallas, in which Green was Chairman of the Committee on Resolutions (459); there was a split and two Conventions were held; Green stood with the Hawley and Lyons factions and the Black and Tans held a Rump Convention and Green was on that as a delegate too (460); that Green did not go to every Convention, he was in the Adolphus Hotel at Dallas when he was nominated for Governor at the Houston Convention in 1906; Green wired witness at Houston that he had received a telegram from his mother that he must not accept any political nomination (463). Counsel for Texas offered and read Tex. Ex. No. 3, a letter from Mrs. Hetty Green to Colonel Green, reading "My dear son— The compliment your great and adopted state has tendered to you, I know you will not forget your Mother who needs & demands your assistance part of the year. In haste loving your Mother Hetty H. R. Green Bellows Falls Aug 27th/06" (466).

Witness further testified that the Green-McDonald faction was active until 1928, when it elected its delegates in the usual way (470-1); witness and Green had an agreement that in the event their delegate was seated in the National Convention Green would bear one-half of the expenses and witness the other half—about $23,000; Green paid one-half and witness the other half but they got knocked out and nothing came of it (475); that they then bolted and Green and witness went for Al Smith; that Green did not tell witness he would not further participate in Texas politics (476); Green told witness he did not want to be on the National Committee because he would have to be moving around, going up steps, etc., and he wanted witness to use his stamp as he had done which would give him the publicity, and "he wanted to go back to Texas and make this his home, and he could attend to that if I would see that his office was run as it had been when he was State Chairman before" (477); that from 1896 to 1928, it was witness' privilege to go to Green's room, ride around in his car with him; that he went to lunch with him in his office in the Trinity Building in New York City; was

with him two days in 1920 (478); never saw him at his Summer place; Green told him he was building some sort of a "contraption" with a lot of rooms and wanted him to come up and see it but he never has (479); never went to his Winter home in Florida; Green told him he was building a home on an island and wanted him to go down there; he told him he was going to come back to Texas and build him a home somewhere, that the climate was such that he could not get around in Winter—he would slip, could not walk on the icy paving or freezing sidewalks and he was coming back and that was the reason why he wanted to be National Committeeman so that he could have something to engage his time; he said that that was the only position that he went after that he got and really wanted (479-480); when Green had the Elm Street quarters in Dallas, Tex., witness went up there two or three times a month and played cards with him; Green stayed out of local politics but backed Mr. Colquitt in electing a Mayor of Dallas at one time (480); Green elected Colquitt to three different positions; when Colquitt ran for Governor and was elected, he put Green on his staff as First Colonel—that is where he got the title (480-2); Colquitt lived in Terrell and was Editor of a paper there; he was elected Railroad Commissioner of Texas about 1908 and Governor in 1910 (483); witness supported Culberson for Governor in 1896 (483); Green's policy was if he could not replace Democrats with Republicans he would prefer to elect the best Democrat (484); while the Conventions were on Green would leave his railroad business and attend them, living in his private car, watching and shaking hands with the people; the people liked him because he was democratic (485); he mingled in all classes of society in Texas (486); beginning in 1896, Green drew two or three $25,000 checks, which were cashed and the money spent (487); when Foraker was running for the nomination in 1908, Green told him he gave the National Campaign Committee $50,000 (488); in 1912, the Green-McDonald faction succeeded in seating its delegates to the Republican Convention; they were committed to William Howard Taft and in 1916, the Green-McDonald faction were seated and were all in favor of Mr. Hughes, who was nominated unanimously; in 1920, the Green-McDonald faction was for General Leonard Wood, who was the personal choice of Green (490-1); in 1916, Green said

his mother had just died and he did not care to be in the limelight (491); in 1920, he did not attempt to get any office; in 1924, there was no contest in Texas but his faction voted for La Follette (493); from 1896 to 1900, Green was the absolute boss of patronage in Texas (493-495); witness had been in Green's private car from the time he first got it until he left Terrell (496); it contained a desk for himself and his stenographer, a big stateroom for himself and one for his guests, place for the porter and cook (496-7); witness has been in that car all over Texas and to St. Louis; Green went all over Texas and into Mexico, to the Northwest States and followed the Ringling Brothers show (498-9); last time he saw Green he said he was not what he used to be, his leg was giving him trouble and he was not well (498-9); Green, when he first saw him, was about six feet, four inches tall and weighed about 250 pounds; the last time he saw him was at Marlin and he was in bad shape (499-500); in 1935, when he was in Marlin, he called up on the telephone and Mrs. Green told him the Colonel was desperately ill and the doctors prevented any one from seeing him. On cross-examination by counsel for Florida, witness testified that he first met Green in February, 1896, and knew him from then on; witness bought the Bank in 1912 and sold it in 1930 (503-4); never saw Green in Texas after 1910 more than twice a year (505); Green was not living in Texas when witness sold his Bank in 1930; witness thinks he had a Summer home in Massachusetts, a Winter home in Florida and probably a business office in New York (506); the last time he saw Green in New York was in 1920 and before that when witness was in politics he was up there nearly every month; had lunch with Green in 1920 in his apartment; on that occasion he stayed there about twelve days (507); the last time Green was connected with politics was in 1928 and the last Convention in the State that he participated in was in 1908 (508); after 1908, he and Green conferred over the telephone about political matters (509); he kept in touch with him to get the money to campaign for Green as National Committeeman (510); in 1896, Senator Quay and not Green put up the $30,000 subject to witness' check; Green gave $1,000 to the same fund subject to his check (511); in 1898, Green put up about $30,000 subject to his check and in 1900, witness drew what he wanted; in 1902, he put up about $15,000; in 1904,

about $20,000; in 1906, about $10,000—that was the last; all were subject to witness' check (512-514); the last time he drew on him in 1928 he got one-half of $23,000 (514-515); in 1920, when he was in New York, Green gave him $25,000 in cash in $1,000 bills and witness brought it to Texas (515); in 1928, witness drew on him through his Bank for $11,000 and he honored the draft; he was as friendly with Green as a negro could be with a white man (516); he only bought the delegates the first year 1896, when he was first elected State Chairman—never afterwards (517); he saw Green once or twice a year between 1911 and 1927 and at Marlin, Tex. in 1930 (519); never saw him in Texas between 1927 and 1935 (520); Green told him he was building something to commemorate his name or his mother's name and there would be 100 rooms in it; that he was going to turn it over to some eleemosynary institution (520-523); in 1920, Green told him he was going to build a Winter home in Miami, Fla. (523). On cross-examination by counsel for Massachusetts and Mrs. Wilks, the witness testified that from 1896 Green was front-page news in the Texas papers (528); that he entered Green's employ in 1897 and continued until March 4, 1909, and was paid a regular salary; that he was in his employ when he wrote the resolution adopted by the Convention which was read into the record (529); in 1900, Green was seated as delegate to the National Convention but witness was not (530); witness was known as "Gooseneck Bill" (531); (witness gave further details of the political activities of Green from 1904 to 1928 (532-3). Green was never elected to any State office in Texas; he was nominated once but immediately withdrew (535); after 1906, Green never attended any more State or National Conventions and was never on any Committees thereafter (538); from that time on Green furnished the money and witness the activity (543-4); on the occasion when Green was interested in the Dallas Mayor Campaign and was living at Elm and Griffith Street, he told witness there was some talk about him living with a common-law wife, in the open against the sentiment of the town, that they were going to "run him out" and Miss Harlow had to go several times to Chicago and stay a month (545-548); that Green said he wanted to live in Texas; Mabel is not satisfied to live here under this cloud of all the officers who would come down and inter-

fere with them—something of that kind (545-9); on another occasion when he was up there in 1920 he said he was going back to Texas but Mabel did not want to go back to Texas (551). On redirect examination by counsel for Texas, the witness further testified that at the time Green told him he was building something up in Massachusetts he said, "There is where Mabel wants to live and I am not going to live there, and the reason is it is too cold for me up there; I cannot get around," and he further said, "I would rather live in Texas than any place on earth, and I am going to get me a home in Terrell and I am going to build me a house in Terrell; I am going to have me a summer home in Florida and escape this cold—I cannot stand it" (552). This conversation occurred in 1920; that Green said he could get the nomination as Senator from New York if he would make his residence there but he said he would not do it (553); that he told him he had adopted four Spanish or French girls, had given them an education and would give them $250,000 when they became of age (553). Wilks Ex. No. 1 was received in evidence, being a letter dated February 10, 1921, to Harry Beck, of Dallas, Tex., signed "E. H. R. G." reading "Replying to your telegram of the 9th—I am entirely out of touch with the political situation in Texas and at present I cannot say definitely whether I shall be in town the 21st, it is too far ahead" (561); that this was in reply to a telegram from Beck to Green at New York City February 9, 1921, reading "Must confer with you on Texas political situation; will arrive in New York February twenty first wire if you are to be out of city as I will come on if I do not hear from you by February eighteenth" (Wilks Ex. No. 2) (563).

The witness further testified in response to questions by counsel for Texas that Harry Beck was a member of the State Executive Committee at that time and wanted to get Colonel Green to back up his Black and Tan organization (564-5); that witness and Beck went to New York in 1920 to see Green (566); that Beck was a white man and has recently been in a serious automobile accident.

F. B. McKay, of Dallas, Texas, District Freight Agent of the Southern Pacific Railway, with headquarters at Dallas, Texas, testified that he had been employed by that Company

since April 1, 1928; prior to that from October 1, 1894, he was employed by the Texas Midland Railroad, first as clerk, afterwards as Freight and Passenger Agent (571); that he was then living in Terrell, Tex., where he resided for 33 years; that he was made General Freight and Passenger Agent in 1902 (572); that Green first appeared on the scene in 1893; the Texas Midland Railroad then intersected the line of the Texas and Pacific at Terrell, Tex., ran to Ennis, Tex., about 32 miles, in a southwesterly direction (573-4), and in a northeasterly direction 52 miles from Garrett to Roberts, in Hunt County, the terminus (575); at that time the Texas Midland was a "road running from nowhere to nowhere" (577); that the original line of 52 miles from Garrett to Roberts was built by C. P. Huntington and was intended as a feeder to the Houston and Texas Central Railroad; the latter road went into receivership and this branch came into the possession of Mrs. Hetty Green, together with another small branch extending northwest in the direction of Waco; both branches were originally intended as cotton feeders for the Houston and Central; with these two pieces of Railroad on her hands and no traffic sufficient to maintain them, Mrs. Green sent her son, E. H. R. Green, to Texas and his first act on arriving there was to sell the branch that extended to Waco (578); he then applied himself diligently to rebuilding the branch from Garrett to Roberts to make it self-sustaining; he changed the point of connection with the Houston and Central from Garrett to Ennis in 1894 and that same year extended the road on the north from Roberts to Greenville, approximately fifteen miles (579); Greenville had three roads and a population at that time of about 5,000 (580); in 1896, Green acquired trackage rights over the Cotton Belt from Greenville to Commerce, approximately fifteen miles, and the same year built an extension of 37 miles from Commerce to Paris, giving him a total mileage from Paris to Ennis, including the Cotton Belt trackage of 125 miles (581-2); Paris then had a population of 10,000 and Commerce about 2,000; Commerce was the junction point of two divisions of the Cotton Belt; that Paris was the junction with the St. Louis and San Francisco, known as the Frisco, the main lines of the Frisco from St. Louis to Paris, the main line of the Texas and Pacific and the secondary main line of the Texas and Pacific from Texarkana to Fort Worth (589); the main line of the St. Louis and Frisco line

from St. Louis to Paris, a distance of about 600 miles (583); Green built the connection with the St. Louis and Frisco to make a line to the Gulf Coast (584); this plan for a Gulf Coast line collapsed (585); there was no further extension of line mileage on the Texas Midland after that (585-6); but after the termination of Federal control in 1921, Green built about fifteen miles between Greenville and Commerce, Tex., to replace the trackage arrangement previously had with the Cotton Belt (586); in order to place the property in better shape for sale he built this gap at a cost of something like $500,000 (587); Green lived in Terrell about a year before witness went with the road in 1894; from then until 1911, he devoted the major portion of his time to the operation of the road and the officials of the road kept constantly in touch with him; he was exceedingly active in developing the territory to increase the tonnage (588-9); when Green became the President, it was a very decrepit piece of railroad (592); he bought complete new equipment in the form of engines, passenger and freight cars, established the finest passenger equipment of any road in the Southwest, substituted heavier steel rails, ballasted with a new form of ballast called burnt gumbo, a clay-like material, put in steel bridges and built station houses (593); put on larger cars and a complete passenger train forming part of a through passenger equipment train operating between St. Louis and Galveston; the train was known as the "Lone Star Special"; it was the first train operating in the South with an observation-sleeping car or observation-sleeping cars and cafe lounge cars; he introduced the electric locomotive headlights in Texas; he brought the first gasoline-electric motor cars South, after the automobile had become a factor in transportation; they were said to be the finest cars at that time operating in the United States and had a seating capacity of 100 passengers; they were propelled by electricity, generated by gasoline engines on the cars and capable of a maximum speed of 65 miles an hour (594); the passenger service originally consisted of two trains each way daily and the encroachment of highway competition reduced it to one motor car each way daily (595); the highway competition reached its peak in 1915 and it was estimated that 40% of the local passenger and freight traffic had been diverted to the highways and was never recovered; Green introduced gadgets for opening windows, vestibule cars, experimented with a cool-

ing system and ran short excursion trains to bolster up passenger business; that as the result, the Texas Midland was looked upon as the best equipped short line in the Southwest (595-6); (Tex. Ex. No. 4 was admitted to show Green's interest in Texas and his railroad activities (599-610). Between 1893 and until the sale in 1928, the Railroad had an outstanding character as a one-man railroad and Green was that man; Green's living quarters in Terrell at the time witness went with the Railroad were in the Harris Opera House on the main business street (611); he also operated a demonstration farm of about 200 acres in Kaufman County four or five miles from Terrell (612); it was devoted mostly to the cultivation of cotton, chickens, pecans and flowers (613); in 1903, the Mexican boll weevil had extended into Texas and devoured the cotton crop to an alarming extent; Green became much aroused and at his own expense established this experimental farm and turned it over jointly to the Federal and Texas Agricultural Department, provided equipment and actively encouraged experiments to combat the weevil; as a result, joint bulletins were issued recommending early-maturing North Carolina cotton seed, which was adopted generally by farmers throughout North Texas; the principal co-worker was Dr. S. A. Knapp, formerly President of the Iowa Agricultural College; he was the first General Field Agent of the Federal Agricultural Department (613-615); this was the first demonstration farm ever established (616), and cost Green about $75,000 (617); the cultivation of flowers at Terrell led to the organization of the Green Floral and Nursery Company, engaged in the wholesale flower business, capitalized at $150,000 and earning 15% (618-19); Green organized a professional baseball team for the promotion of passenger business over the Railroad; his private car known as "Lone Star" or "999" was kept at the shops in Terrell when not in use; when used by Green it was either parked at Terrell or some other station on the Texas Midland Railroad or at Marlin (620-1); Green remained in the car three or four days and nights in succession—the average time spent on the car was three days per trip; witness was with him on all inspection trips, which were made usually twice a year during the time his health permitted it (621); prior to 1911, Green made frequent trips on the car and frequently occupied the car when he did not make any trips; witness occupied the car with him

every night when no trips were made; it was usually parked across from the station at Terrell and was used by Green as a combined residence and office (622-623); about 1900, Green acquired living quarters at Dallas but was in Terrell every day; at the time he took over the Railroad operation he made Terrell his headquarters and established the shops at Terrell; he was very explicit in requiring that Terrell be shown as his place of residence in preparing any affidavits or reports for the Interstate Commerce Commission or the Texas Railroad Commission (623-624); in 1911, Green informed witness it would be necessary for him to spend more time in the East because of his mother's advanced age and illness; prior to that he made one or more trips East but never relaxed his close control of the Railroad prior to the sale in 1928 (625-6); "we reported to him on the most minute matters and he personally inspected the Road usually twice a year;" about 1911, Green made it plain to witness and his two associates in the operation of the Road that they would have to make the Railroad float or sink with it, that he would put up no money for its operation (627-8); witness tried to interest connecting carriers in acquiring the Railroad under a lease by Green's instructions and a lease-contract was negotiated with the Southern Pacific which was suspended by the taking over of the Railroad under Federal control in 1918 (627-30); the Railroad was returned in 1920 and at Marlin in 1921 or 1922, when he was there for the first time, he instructed witness to resume efforts for the disposition of the Road and it was finally sold to the Southern Pacific in May, 1927, effective April 1, 1928, (629-630; 632-3); in 1915, when Green found they could not successfully meet highway competition, he instructed witness to find a lessee for the Railroad (635); the proposition of purchase was made to him in 1927 by the Southern Pacific; Green made no effort to sell and at one time thought of putting his busses and trucks on the Road (636); at one time he considered taking up the tracks and converting the roadway into a high speed toll road and finally decided that the best solution was to try to pass the burden to one of the connecting systems (637); in August, 1928 or 1929, witness and Mrs. McKay were guests of Green at South Dartmouth and when witness commented on the size of the house, he said "he probably would convert the house into a home for old couples" (637-8); after 1915, his health was the chief concern; Green said in sub-

stance that he had "one home for the Summer time, on home for the Winter time and he would not stay in Massa chusetts during the Winter season; he would not stay i Florida during the Summer season" (638); "I tried o several occasions to interest him in acquiring at Marlin; due to some five or six annual trips that he made there, his life was undoubtedly prolonged by the treatment—the effect of the hot mineral baths at Marlin" (639); witness was responsible for him going to Marlin; he received a telegram from Green in 1921 asking him to investigate Texas resorts, of which there were a number, and he did so and recommended Marlin and was directed to make a reservation for Green and his wife; at that time he was in such condition he could not bend his knee and they had to put a blanket down on the steps and slide him down to get him out of the car and into the wheel chair (639-640); he stayed there two or three weeks and walked when he left; witness urged him to acquire a home there and other friends did likewise; his reply was the idea struck him all right but he did not feel the condition of his health would permit him to make the long train trips to Marlin—he could not stand the long train trips to Marlin (640); about the latter part of 1900, there was a replica of the New Orleans Mardi gras at the Dallas State Fair and Green was the caliph (641); that witness knew of Green's connection with the American Exchange Bank of Dallas, his interest in the Texas Bithulithic Company, the Uvalde Asphalt Company and his purchase of highway bonds of Kaufman County and State of Texas Water Works (643); (Tex. Ex. No. 5 was given in evidence to show that Green subscribed $32,800 to the Texas Bithulithic Company (645-6). Witness further testified that Green expressed the thought that the lignite deposits of Texas represented one of the most important mineral resources of the State and installed in the shop at Terrell a lignite gas machine as motive power for the operation of the shops (646); he was instrumental in drilling a number of oil wells and invested in the Murray Company which drilled a number of offset wells (647-8); also in the Dallas and Osage Oil Companies (649); he had geological maps showing the possibility of oil along the line of the Texas Midland and encouraged drilling, and some miles east of the Railroad oil was discovered (650); he became interested in the American Round Bale Cotton Company of Boston and either directly or through his mother financed the construc-

tion of ten round bale gins along the line of the Texas Midland; but it was a mistake because all of the cotton produced in Texas is based on the square bale method, millions of dollars were involved in the gathering of cotton, the baling of it and the compressing of it until the time it is produced until it is put on board the ship, and it is said that fifteen men on an average live on one bale of cotton from the time the farmer puts the seed in the ground until the bale is put on board the boat; that in introducing the round bale method, Green was going up against all the invested millions in the square bale method, was putting a good many men out of employment; so much so that those ten gins in due course of time all were destroyed by fire (652); that was around 1905 (653); Green collaborated with one of the oil mills to refine cottonseed meal so that it might be used for human consumption; that was between 1905 and 1911; this was mostly educational propaganda to get the people to eat the meal; he also on his demonstration farm near Terrell experimented on a small scale with terracing of land to prevent erosion (654-655); there were two distinct periods in Colonel Green's life—the first period 1911 was the breaking of his mother's health and in 1915 he became concerned with his own health—an interval of four years—and in 1921, when he really did become alarmed (656); from 1918 to 1920, witness was out of touch with him (658); in 1915, witness had a conversation with him in which he said that he considered his real friends to be in Texas (659); they would get what they called an itinerary of his movements from his secretary, Walter Marshall, who would outline in advance what his movements were, when he would be in Massachusetts, Florida, New York and Texas (659); "his coming here was always a matter of much rejoicing when we would get to him before his health got so bad" (660); we usually met in the hotel at Dallas and afterwards at Marlin; Mr. Wells, Mr. Corley and witness usually met him at the depot and getting away from him was a task; that continued from 1911 to 1917 or 1918, but after 1915 witness could see a change because of the concern he was giving his health (660); Green never made fun of Texas people; he had a private box in the polo grounds in New York and said when he invited a party of friends from the Chemical Bank to go to the polo grounds usually there would be some man in the party who would spring a business proposition on him sometimes in the most thrilling

part of the game (661); he never said or indicated that he had changed his Texas residence (662); his mail continued to be received at Terrell until he sold his Road and is occasionally received now (666); Green gave handsome gifts to witness and other friends (667); Green's apartment in Terrell was called the Green Flats; between 1894 and 1911, he made regular trips between Dallas and Terrell each year (668); witness has no recollection of ever having heard him refer to any other State than Texas as his residence (669); Green always seemed overjoyed to get back here; he always called Terrell, Tex., his residence up to the time of his death and never told witness any other place was his residence (670). On cross-examination by counsel for Florida, witness testified that the stock of the Texas Midland was owned by the Westminster Company from 1911 on—one-half by Hetty Green and one-half by Colonel Green and prior to that time by Hetty Green (675); that she sent her son down to look after her Railroad; he was then a young man in his early twenties and not experienced in railroad operations; that other than the loss of a leg in childhood he was energetic and healthy and very much interested in everything that pertained to the development, the building and extension of the short railroad and to the building up of traffic (676); he gave all of his time to it, acquired simple living quarters in Terrell, had no wife or household; later on, he acquired sleeping quarters in Dallas but had no wife while living there (677); in Dallas, he had an apartment—not an office; he never had an office in Dallas or any other town in Texas except Terrell (678); his secretary never lived with him in Dallas; the building in Dallas had been converted into an apartment; to the knowledge of witness, neither his mother, sister nor kinsfolk visited him while there (679); the demonstration farm, boll weevil, flower gardens and other activities were prompted almost completely by the desire to divert traffic on his Railroad (681); Green said to witness and others on many occasions that the basis of his experiments was that he could afford to experiment along untried ways that the ordinary man could not afford and that always the object was to point out the way by which better things might be done to help his fellow men (682); Green lived this life up to 1911 and kept in constant contact with his mother (683); the extensions of the Texas Midland were made from funds supplied by his mother or by the Westminster Company in the Green

ownership (684); in 1911, Green said his mother had asked him to devote more of his time to her welfare and he went back to New York and gave most of his time to her business (685); by 1911, the demonstration farm and flower gardens had been sold (686); but he was still interested in the production of oil in Texas and Oklahoma (687); after 1911, up to 1915, his usual movements were trips from the East to Texas twice a year—in the Spring to attend the directors' meeting and in the Fall for an inspection of the Railroad; the average stay on each trip was about two weeks; his time was spent between the Adolphus or old Oriental Hotel in Dallas and his private car (688); in 1915, the change occurred because of the development of highway competition which made the short-line railroad increasingly difficult to operate and his apprehension regarding his health (689); witness recommended that they engage in bus and truck operations over the competing highways but he finally indicated that his health would not permit him to experiment in new directions (692); the thing that was uppermost in Green's mind from 1920 was his own health (694-5); 1922 was the first year witness saw him after the Railroad was returned (695); he saw Green and his wife after their marriage on the yacht "United States" at Galveston (696-7); Green did not take his wife to any house in Texas that he owned after their marriage (697); witness engaged an apartment in the hotel in Marlin in 1922 for Green and his wife (699); the usual course of baths was thirty days and the arrangement he made for him was for that purpose; after finishing the baths, Green and his wife came to the Adolphus Hotel in Dallas, remained there not over a week and then went to New York (700); on that occasion when he arrived at Marlin he had to be lifted out of his private car and when he left he walked from the hotel to the depot (701); the next time he saw Green was in April, 1924, at Marlin (702); he made the arrangement at the hotel there for the period Green was to take the baths; Green's condition then was virtually the same as in 1922, he had to be assisted from the train, he could bend his knee, but had to be conveyed from the depot to the hotel in a wheel chair (703); Mrs. Green was with him and they went from there to the Adolphus Hotel, Dallas, staying not over a week (703); on this second visit to Marlin in 1924, witness tried to get Green to buy a home in Marlin; Green had him look at several houses there and report prices to him; Green

made no investigation himself (704-5); witness saw him again at Marlin in 1925 under the same circumstances; when he finished taking the baths he came to Dallas, spent a week at the Adolphus Hotel and then left Texas; witness met him on each trip under the same circumstances but is not sure about 1926; he saw him in 1927, when he spent two weeks or longer at Marlin and stayed not over a week at the hotel in Dallas (705-7); the next time he was in Texas was in 1935 but witness did not see him that year; that in 1929, he and his wife were guests of Green at South Dartmouth (708-9); this was in August; they spent one day, saw the airport, bathing beach and he was told by Green that there were large crowds there on occasions, and when he asked him why he had such a large house, he said he intended to make it a home for old couples; Green did not speak of his sister on that occasion but said the property had been in his family for several hundred years; the building had at least 25 rooms and looked like a small hotel—it was a tremendously large building (710-12). On cross-examination by counsel for Massachusetts, witness testified that he could not make a distinction between official headquarters and residence, but the railroad law of Texas requires certain officials, including the President, to maintain their headquarters at the point where the charter fixed the headquarters of the railroad; that Green may have had other reasons for so designating but that was the controlling reason (715-716); in 1910 or 1911, Green did not tell him "he was removing to New York" (717 and 726). The attention of witness was called to Mass. Ex. No. 13, a photostat of a letter from him to Green, dated Terrell, Texas, August 12, 1910, in which he used the expression "I dislike very much to write you on a personal matter so soon after your departure from Texas but due doubtless to your removal to New York," etc.; that this statement was based upon his lack of knowledge at that time of the cause of his removal (725). Witness identified Mass. Ex. No. 14, a letter dated New York, October 10, 1910, addressed to John Ringling and bearing no signature, in which it was stated, "Sorry I was not able to be with you in Dallas on October 2nd and 3rd. As I am going to spend most of my time in New York from now on, I hope to see you here. * * * President." in 1915, when he had a talk with Green, the latter said he would have to devote more attention to his health and less

attention to the various activities that he had previously followed in Texas—more attention to his health than anything else (729); Green had a rheumatic condition which was affecting his one remaining knee at that time; he was a very heavy man, weighing about 300 pounds, and when he was alone in his room he would hop about on his one leg without the use of an artificial limb, thus resting the entire weight of his body on his remaining leg (730); this ailment was progressing until the acute condition in 1921 at the Adolphus Hotel in Dallas; he not infrequently stated that he was devoting himself primarily to the pursuit of his health (731-2); at Green's request, witness investigated three resorts in Texas—Mineral Wells, San Antonio and Marlin—and recommended Marlin and was instructed by Green to make reservations; on January 19, 1922, he telegraphed Walter Marshall, Green's secretary, "All arrangements completed Arlington Hotel is best and quarters comfortable best bathhouse directly connected with Hotel under charge Doctor Buie graduate Vanderbilt average treatment two or three weeks will positively cure rheumatism special Hotel auto will meet train and car may be parked on convenient track" (733-5); it was about 1924, when he endeavored to persuade Green to purchase a house in Marlin; that it was at Mrs. Green's suggestion that he made inquiry for other quarters for him; they did not like the quarters at the hotel but the Colonel took no interest in it (737-8); had many conversations with Green and in several of them stressed that he ought to have a home in Marlin, that that would be the place for him to live (738-9); that Green did not state that he could not leave his interests in the East to reside so far away, what he said was that the trip was so long (740). In the conversation, he asked Green why he preferred the Texas resort to Hot Springs, Virginia, or Arkansas, and he said "there was too damn much publicity around Hot Springs, Arkansas" and that was why he chose the Texas resort as against the other (741); according to witness' present recollection, about 1910 or 1911, Green said "I have to go to New York and cannot carry out my earlier plans about extending the Midland—see if you can sell it;" that at the time of Green's visit to Galveston on his yacht "United States," after his marriage, the negotiations with the Southern Pacific was still in progress and witness escorted the President and

General Counsel of that Company on board the yacht for the discussion of an operating contract with Green (751); when witness visited South Dartmouth in August, 1929, Green showed him around the place and he saw the airport, radio development and the Goodyear Blimp and hangar, the slide for hydroplanes, the Marine radio compass for the direction of ships by radio, but saw no students (753-4); in his conversations with Green about Round Hill, the latter said the property had been in his family for several hundred years and he was also carrying on some farm experiments there; that that was his reason for locating there; that he does not recall in the conversation that he made any reference to his mother (756); that when he spoke of the home for aged couples, witness thought it might be "a dig at himself and Mrs. McKay" but did not know whether to believe him or not and did not take the remark seriously (755-757); that Green on several occasions showed him stamps and coins but never the complete collection; he generally had the latest ones he had acquired at Marlin (759); that at the Mardi gras in Dallas in 1900, Green was king of the carnival; that he told witness when he went into the greenhouse business he bought all the greenhouses in Dallas; he did things on a grandiose scale; when he bought the yacht, he bought a Great Lakes steamer and when he built a residence at South Dartmouth, he built a castle (760); after 1921, the only time Green used his President's car was sometimes when he would come over from Marlin to Dallas in it and on his inspection trips on the Texas Midland Road of two or three days (770). On cross-examination by counsel for New York, the witness further testified that in his negotiations for the lease of the Texas Midland, he sought to obtain a ninety-nine year lease (772).

Witness admitted testifying in the Circuit Court of Essex County, New York, in the matter of the probate of the Will of Green that the Colonel never discussed his legal residence or his home with him; that wherever Green was he used letterheads which had Terrell as his official headquarters; witness prepared, under Green's direction, many documents and affidavits in which his home or residence was stated—his official headquarters—as Terrell, Texas (782); "he cautioned me on all occasions to show Terrell—Terrell only—as his official headquarters" (783); Green's customary routine was to be in Texas twice a year but

witness could not say positively that he was there twice a year between 1915 and 1918 (785). On cross-examination by counsel for Mrs. Green, witness testified that in 1928 the Texas Midland was known as the largest cotton originating road in Texas per mile of track (788); the attempts to dispose of the Road had nothing to do with Green's physical whereabouts; he was reluctant to let the Railroad go; it was his pride (789-791). After giving some statistics regarding the price for which the Texas Midland was sold, its capitalization, loss, etc., witness testified that Green's private car acquired in 1896, was burned about 1907 and between those years he spent more time in his private car than any where else; that the car was mostly located at Terrell during those years (791); that prior to 1896, Green occupied the Green Flats and later the Dallas apartment, and about 1907, acquired the Commerce Street residence; he was then a single man (792); that Green always instructed him to give his residence or official headquarters as Terrell, Tex., and that witness can make no distinction between the expression "official headquarters" and "residence"—that one might mean the same as the other in our railroad language (794); that he never saw Green vote in Terrell. On redirect examination by counsel for Texas, the witness further testified that always in the Spring of the year Green would attend the directors' meeting at Terrell, in May, and inspect the Road at the same time; that there was no occasion for him to discuss Green's residence with him during the time he made the Railroad reports (796). Tex. Ex. No. 7 (799-805) gives the stockholders' and directors' meetings of the Texas Midland Railroad attended by Green as shown by the minutes between May 8, 1900 and May 8, 1934. The witness further testified that at the time he saw Green in Massachusetts, he manifested a great deal of interest in his ancestral home (806). Tex. Ex. No. 8, being a map of the Texas Midland Railroad, was identified by the witness and shows as names of the stations "Howland"—"Hetty"—"Harlow"—"Greenville," etc. (808). On recross-examination by counsel for Florida, witness further stated that Marshall, Green's secretary, had a daughter who was the wife of Dr. Glass, of the Buie Sanitarium at Marlin (808). On recross-examination by counsel for New York, witness said that his suggestion of the purchase of a home at Marlin was a permanent home (811). On further examination by counsel for Texas, the witness testified that

Green made frequent trips in John Ringling Brothers' cars to the West Coast and made one trip with them to Mexico (823).

Dr. N. D. Buie, of Marlin, Texas, testified that he conducts the baths, clinic and hospital connected with the hotel in which the mineral water coming from the wells in Marlin is used for the treatment of the sick; the clinic is separated from the baths and hospital and consists of various departments, with the usual equipment, and the hotel is connected by a tunnel with the baths; the clinic has a staff of twelve regular physicians and some others associated with it, and has facilities for the treatment of arthritis and kindred ailments (826-8); Colonel Green came to Marlin for the treatment of a rheumatic condition January 24, 1922, accompanied by Mrs. Green, Mrs. Stafford, Walter Marshall, his secretary, and his Swedish maid named Gerda (830-1); the record showed he was then 53, that his father had died at 87 and his mother at 82; that he had had pneumonia, malaria, influenza and an injury to the left knee, white swelling, from which he finally lost the leg; that the existing complaint or illness, rheumatism, dated back only six weeks and Dr. Pascal had diagnosed it as traumatic arthritis of the right knee, superimposed by focal infection in teeth and secondary anemia, with bleeding piles (831); at that time, Green was suffering from rheumatism, his movements were impeded because he had only one leg, he arrived in a wheel chair and walked on crutches with great difficulty (833); he remained about 94 days; the ordinary course of baths was 21 days but he remained for three months (834); from that visit witness became his physician, more or less, until the time of his death; Green made several visits to the clinic, was a very friendly man and unusually cultivated, they became fast friends; on a good many occasions witness visited him at South Dartmouth, Mass., and Miami, Fla. (835); on April 28, 1924, he came to Marlin for about 30 days; on April 27, 1925, May 6, 1926, April 19, 1927, and May 14, 1935, were the subsequent visits of about 30 days each; in 1935, his condition was very poor, his weight had gone to 144 pounds from 310; he claimed to have been six feet four inches tall; he was then pale, weak and had a lot of trouble with his heart and was a badly run down, emaciated man, degenerated in almost every way (837-8); in addi-

tion to much luggage and many trunks, when he came to Marlin he brought a great variety of stamps, coins, currency and business records (838); that witness saw him in Massachusetts on the occasions of his annual visit to the hospitals in New York City between 1922 and 1934—the last visit was December, 1934 (839-40); Green's itinerary was usually to go from Massachusetts to Florida the early part of January until the last few years of his life when he went a little earlier than usual; sometimes he would come to New York and stay a few days before going to Florida, would leave Florida when the weather began to get hot, along in April or May, come to Marlin or to Dallas, then to New York or Massachusetts (841); in the last few years of his life he would go directly to Marlin, going through Terrell, where he would meet his old associates (841); on the occasion of his last visit to Marlin he saw only McDonough, an old friend (842); witness' first visit to Florida was in 1925 or 1926; they lived aboard the house boat; it was before he had erected his house; witness made two visits with him on the boat before the house was finished; after the house was built, he visited there a number of times—the last time about 1931—always as Green's guest (843); he never saw the yacht "United States" but some of the linen, towels and china with "United States" on it were in his house at Round Hill (844); has heard Green speak of Mayor Ashley, of New Bedford, whom he admired a great deal, and he talked about his friends from Dallas and Terrell, all of whom were from Terrell except Mayor Ashley (845); Green was always greatly interested in the development of Texas and what he did politically; he talked about Texas a great deal and talked of his affection for it more than he did of any other place (846); he always took a great deal of pride in the fact that he was a member of the staff of Governor Colquitt and that he had given him the title of Colonel (848); he frequently discussed his participation in the organization of the Republicans in Texas and went a great deal into his activities in that regard and took great pride in them and seemed quite proud that he represented the State on the National Republican Committee (848); witness knew him from 1922 to 1935 and on all occasions when he visited him, Green stated he was a resident of Terrell and voted in Texas; he always claimed citizenship in Texas and said he voted and paid his toll taxes at Terrell until he was 60 years old (849-50); Green told him he stayed out of Massachusetts the first

half of the year because in some way it would make him a resident if he lived up there the first half of the year and he avoided the State for that purpose; witness further testified "I do not know that he told me that he did not want to be a resident of Massachusetts; he told me he stayed out of there to keep from being one" (851); he always referred to the place at South Dartmouth as the "Round Hill House" and to Star Island house "Forty-six Star Island;" "I do not know whether he ever referred to any particular place as 'home' and never designated 'Round Hill' as 'summer home'"; he went there from Marlin, Tex., because lots of times he complained of Marlin getting too hot and he was anxious to get up there on account of the heat (852); witness could answer definitely that he always enjoyed getting up there in the Summer time because of the difference in temperature over Florida, Texas and other places (853); on every occasion when he was with Green, they discussed his health and general condition; he seemed greatly concerned about his health; witness consulted with his New Bedford physician, Dr. Stern, and had a lot of correspondence with Green about what his doctors had said, where he had been, and also had correspondence regarding blood transfusions with Dr. Unger, the blood transfusion expert of New York City, and with his chief physician, Dr. Pascal, of New York (854); that Green was well acquainted with the nature of his physical ailments, interested himself in medical matters, was a great inquirer in medicine and wanted to know the mechanism of the treatment; that Green was a learned man in that respect, took a great deal of interest in his own condition and knew a lot about medicine (855); that after 1922, while he carried on some business he devoted most of his time to the pursuit of health; he was interested in the operation of his Railroad, knew where his bonds and business connections were and discussed them with witness (856); that Green telegraphed him that some of his physicians advised him to seek a high altitude and he was going to continue to visit Massachusetts in the Summer and Florida in the Winter; that warm weather and sunshine was considered beneficial for arthritis (857); that Green referred to himself as a "Texan" on more than one occasion (858). Witness identified Tex. Ex. No. 9 (861) from Green, South Dartmouth, Mass., dated October 25, 1935, addressed to him at Marlin, Tex., in which he sent him a button and card regarding the "Recruits of 1936" "I hesi-

tate to send you this button, but, being an old Texan and thinking the matter over carefully, I remembered what my old friend David Crockett said: 'Be sure you're right, then go ahead.' I have always had a great deal of respect for your good judgment, so I am sending this button and card to you'' (862).

Green told witness how he had lost his left leg; that he had a chronic bone disease and his mother carried him to various celebrated physicians and resorts; when he was twenty-one, his mother gave him a million dollars and told him he was his own man and she would not have anything further to do with his treatment other than to wish him well and let him run it to suit himself; that Green had Dr. McBurney, a famous general surgeon of New York, cut off his leg at the age of twenty-one or soon after; that he cut it off a second time when he was living down on lower Fifth Avenue in New York City; he told witness that he was on his crutches one snowy day and some big fellow or boy jumped up on his back and shoved his stump down into the ice and snow on the sidewalk, giving him a terrible injury, and McBurney cut it off the second time near the hip; that he joked a great deal and encouraged many stories about it being done cheaper or for less money, but that this was the true story of the amputation of his leg given to witness by the Colonel himself (868-9); one of the houses at South Dartmouth was pointed out to witness as the home of some of Green's people and on one occasion in New Bedford, a stone house was shown him by Green as having been lived in by his people (869-870); Green said on several occasions that he was greatly touched by the fact that in various parts of the Country provision had been made for old ladies' homes or veterans' homes where old couples were separated and he intended that the South Dartmouth house would be used as a home for old men and old ladies where they could spend their days together (871); Green said his mother was very religious, believed in the Bible verbatim, and thought it sinful to keep the body out of the ground after death and requested that she be not embalmed or put in a permanent casket but be placed in the grave immediately after death; that in order to ship the remains to Bellows Falls from New York they had to put the body in a metal casket, hermetically sealed, and upon arrival at Bellows Falls, the expensive casket was exchanged for a cheap pine coffin (872); witness understands that Green as well as his mother and father are

buried at Bellows Falls, Vermont, and that Green was born in London, England (873); that Green was interested in the Texas Centennial Coin and bought a large number; also in the issuance of a postage stamp to commemorate the Centennial of Texas' Independence in 1936 and wanted witness to have his brother-in-law, Senator Connally, take it up with the Post Office Department (875-5-6). Witness identified Tex. Ex. No. 10, a telegram from South Dartmouth, Mass., October 29, 1930, from Green to witness, reading "Sorry I am not able to comply with your wonderful request. Dr. Pascal insists that I go to a high altitude. Had planned to go to Lake Placid but on account of condition have changed to Asheville. No car. Dr. Pascal claims that as he has gotten rid of my rheumatism I must now keep away from low altitudes that is if I want to be able to visit Florida in the extreme cold weather and Roundhill in the Summer as I must build up my blood and do nothing to thin it. If it were left to me I don't know of anything I had rather do than make you a visit as I have always had very pleasant trips to Marlin (878).

He also identified Tex. Ex. No. 12 from the Lake Placid Club, New York, October 24, 1932, from Green to witness, in which he said "My health is much better now than it has been for the past month or six weeks and, under instructions of Dr. Pascal, I have come up here to see what this brisk mountain air will do for me" (883).

Witness also identified Tex. Ex. No. 13, a letter to witness from Green, Star Island, Miami Beach, Florida, January 23, 1935, reading, "In reply to your letter of December 29th, will say that I went under treatment of two doctors in Miami—Drs. C. F. Roach and Walter Hotchkiss, of which you are probably aware. There is a good deal of anemia in Florida and these fellows have a good reputation in bringing them back. They have been giving me Lederle Solution Liver Extract, 3 cc size. At first they gave it to me in the shoulder by injection, which produced a reaction of severe rheumatic trouble in the joints of my hands. Then they gave me some kind of salicylate for the rheumatism caused by the reaction, which went down almost immediately. Then they commenced giving me the liver by mouth once a day in orange juice and there was considerable improvement. On the attached sheets you will find the result of the blood tests from December 29th to January 18th. My attending physician has been treating Dr. Unger's

brother-in-law here in Miami Beach. I am getting better and have started going out driving again and I think the pleasant weather down here has helped me a little. Dr. Roche says he thinks if I keep up this treatment about two weeks longer I will be out of the anemic class. Thanking you very much for your interest and regretting that I was not able to let you know about my condition sooner'' (885-6).

Also Tex. Ex. No. 14, telegram from Green, Miami Beach, Fla., to witness, Marlin, Tex., May 6, 1935, reading ''Will arrive Tuesday fourteenth two thirty two a.m. Will remain in car until eight a. m. In party there will be Mrs. Green and I, Miss Hodges, day nurse, night nurse, secretary and Stella'' (887-888); that Green had a boat called the ''Isola Stella'' which witness understood to mean ''Lone Star'' (889). On cross-examination by counsel for Florida, witness testified that he first met Green when he came to his clinic as a patient January 24, 1922 (890); his general condition then was pretty good, although he was suffering from rheumatism but improved a great deal (891); he next saw him in his private car at Ennis, Tex. the next year; he was still suffering from rheumatism (893); in 1924, when he saw him at Marlin, he was still having trouble with his rheumatic condition but was a little better (895); he again saw him at his sanitarium in 1925—still rheumatic (896); again in 1926, when he began to show deterioration fast, weakness, loss of weight, which kept on to the end of his life (898); the next and last visit was the Spring of 1927, he was still sick, complaining of rheumatism and there was evidence of diabetes (899-900); did not see him in Texas again until 1935, when he stayed about a month; he showed marked deterioration and loss of weight, high blood pressure, anemia, difficulty in moving around and no appetite (901). Witness identified Fla. Ex. No. 1 from Mabel H. Green, South Dartmouth, Mass., June 22, 1935, to witness (904), in which Mrs. Green said among other things, ''We arrived here safely last Tuesday evening and found it very cool. We have steam on in the house and was glad to have steamer robes when they met us at the train. We had a very comfortable trip home, except Monday, which was very hot. The Colonel is feeling fine and the day after we arrived he went up town and has been going every day since. So far as I know, he has comfortable nights. He can sleep well

because it is cool. We enjoyed our stay in Marlin and hope to get down again next year, but that is too far ahead to make plans. If Roosevelt socks the rich, we may not be able to go."

Witness never saw Green after that; according to witness' recollection he always came to Marlin from Florida, except the first time from New York (905-6); the South Dartmouth house was comfortable and well appointed, had provision for many servants, two dining rooms, a breakfast room, etc.; they tried to make it like an English gentleman's home where he was able to keep up a large number of servants and butlers such as a rich man would be able to do (910-11); Green never said what his object was in building it but stated his object with reference to disposing of it as a home for old people to live together (911-12); Green did not mention it as a memorial to his mother; witness saw the "Charles W. Morgan," a Whale Boat Shrine, and some shops, as well as some people from the Institute of Technology (912-13); Green had a bathing beach and broadcasting arrangement, and the grounds were open to the public (914); witness spent about one week with Green on his house boat in Florida in the Spring of 1926 (915) and again in 1927; in 1931, he visited him at 46 Star Island (917), Mrs. Green was there; it was a lovely place, with a large lobby on the ground floor, dining rooms, butlers' quarters, steward's office, Green's private office with moving pictures at one end, large stairway with a mezzanine, guest rooms on the second floor, with grounds covering a good deal of frontage on Biscayne Bay, where there was a wharf and Venetian landing (918); the Island is artificial and it is a section of wealthy homes; the grounds were well laid out, had a large number of palms transplanted from the Everglades and many shrubs; the house was beautifully and lavishly furnished (919). On cross-examination by counsel for Massachusetts, witness identified Mass. Exs. Nos. 19 and 20, the first a telegram from witness to Green at the Waldorf, New York City, June 6, 1927, reading, "Please let me know how you are feeling. How you stood the trip home. Would like to hear from you in a general way how everything is with you. Best regards to yourself and entire family from all of us", and the reply from Green to witness, New York, June 8, 1927, reading, "We all stood the trip well but all caught cold on arriving in New York;

however, the weather has now changed and everybody seems to be on the improve" (926); that the record of Green's case May 14, 1935, gives the address "South Dartmouth, Massachusetts" (929), and on May 6, 1926, the address in the record is "Round Hills, South Dartmouth, Massachusetts"; that Green stated he wanted to avoid Massachusetts on account of not wanting to be a resident of the State and did not want to be taxed in that State; that witness is pretty sure Green said to him that it was on account of all things that entered into residence in that State, including not only being a citizen but paying taxes there; that he is not undertaking to quote his words but that is his best recollection; that he did tell him that was his reason for remaining out of Massachusetts for six months of the year —not for taxes—but general residence there and tax matters too (942); that for some reason he did not want to be considered a resident of the State of Massachusetts; the reason for that was he thought he was a resident of the State of Texas and that he could not be a resident of too many States, but only one; he always claimed to be a resident of the State of Texas and tried to preserve that (943); that witness does not believe business entered into it but thinks he always believed and thought that he was a resident, a legal resident, of this State (Texas); that he never said anything in regard to the question of taxation with reference to his residence in Terrell or that it had anything to do with his Railroad headquarters there; witness understood his residence in Texas was considered by him just like witness considers himself a resident of Texas (944); that Green always said the laws of Florida encouraged rich men to go there and have their Winter homes there because they did not make citizens of them or they did not have to become citizens or were not claimed as citizens of that State, and that State was inviting him to go there and invest his money; that he does not recall any mention of taxes in this connection (945); that Green stated the Florida laws were such as to encourage millionaires to go there because they were considered non-residents (946); that he never told him in any of his conversations that Texas was a lenient State in tax matters (946).

Witness identified Mass. Ex. No. 21, a telegram dated October 25, 1930, to Green, South Dartmouth, Mass., from the witness and Dr. Glass (948-9), reading, "We have

learned that you are planning a trip to Lake Placid for a little rest and change of environment and building up. We are all concerned about your health and welfare. Therefore we are wiring you at this time to urge you to come to Marlin and stay with us until time for you to go to your place in Florida after Christmas. We can fix you up a whole floor in the new hotel and let you have service and attendants as you desire and you can bring one of your chefs along to superintend your meals. You can take the baths as often as you feel like it. You would be surprised how easy it is to go from the new hotel through the Marble Subway to your bath without any exposure or exertion. You will live in perfect safety in a modern fireproof hotel with every comfort and convenience offered by the best hotels every where. We can give you the entire use of the eighth floor for your offices and living quarters. There are sixteen rooms including four suites, all of which can be converted to any sort of arrangement desirable for giving you and Mrs. Green all the comfort you could care for. We are having marvelous weather of an Indian Summer nature, and with this arrangement weather changes would have no effect on your comfort and your routine. We are tremendously anxious for you to come and will be most delighted to have everything ready for you on one days notice. You can have as many of your friends visit you or as few as you like or nobody at all if you desire. A new Lincoln car will be put at your disposal for as much driving as you care to take and you can bring George along for this. We feel that this will do you more good than any other thing that could possibly be offered to you and know that you will be delighted with the accommodations at this time. Awaiting your pleasure and hoping that you will give this proposition your earnest consideration, we remain yours sincerely." To this telegram, Green replied October 29, 1930, "Sorry I am not able to comply with your wonderful request" (950); that witness did not send Green telegrams or letters every year urging him to come to Marlin, but when the new hotel was opened in 1930, they undertook to describe to him the safety of the accommodations, luxurious apartments and that it was not subject to the fire hazards of the old Arlington Hotel; that the first visit was made because Mr. McKay made the arrangements for him (951); that on several occasions witness sent both letters and telegrams urg-

ing him to come because he felt Green depended on him for his health; that he went to see him in South Dartmouth and urged it on him after consultation with his doctors (952); that about 1927 Green began to "sort of give up the fight" and on the visit of witness to Miami Beach in 1931, he said he was coming to Marlin but changed his mind and went to Lake Placid (953). Witness identified Mass. Ex. No. 22, March 17, 1931, being a telegram from witness to Green at Star Island urging him to come to Marlin. He also identified Mass. Ex. No. 23, telegram dated July 26, 1928, from the witness to Green reading, "We would be much complimented to have you join us in some way in identifying yourself with our new hotel project. There are 125000 dollars common stock 75000 dollars preferred stock and 240000 dollars first mortgage bonds. They only asked us to buy 65000 dollars preferred stock which we are rapidly taking up. We thought perhaps you would not object to taking 10 or 15 thousand of the preferred stock. We further want to get suggestions from you or your architect for the construction of special apartments in this hotel for your exclusive occupancy as you have in the Waldorf and nobody else use them. They are using all the lots across from the clinic for the project. The entire things will cost about 400 thousand dollars and will give us 109 rooms. Hospital on top floor. They connect with the clinic and bath via subway under the street. It is of Spanish architecture and design and will make a beautiful building. They are calling it the Buie Hotel but I would be very pleased to see it name- The Green Buie Hotel. We would be glad to hear from you in the matter. Best regards" (958-9).

On cross-examination by counsel for New York, witness stated that Green said he wanted to be fair with his taxes and made a great effort to be honest and square with his taxes (962); he spoke of one of his relatives having been born in the New Bedford house but witness could not say positively that he said it was his mother (963); that the address given in the Marlin Clinic case record of Colonel Green bearing date April 28, 1924, is "New York City" and the case record for Mrs. E. H. R. Green, January 25, 1932, shows "Waldorf-Astoria, New York City" as the address; that Green's case record for May 6, 1926, shows Dr. Pascal, of New York, as the family physician (963-4); that witness visited the doctor at his office in New York City (965); in

reference to hurting his leg after it had been amputated the first time, Green said he was standing on lower Fifth Avenue, New York, "where he lived" when somebody knocked him down in the snow and hurt his leg (965); that witness saw the coin and stamp collections at Miami Beach, Fla., and also at Marlin on several occasions between 1922 and 1935 but cannot say that the collections were identical; that these were among Green's greatest interests and he was fascinated by collecting unusual currency, such as bills accidentally printed "20" on one side and "10" on the other—he would collect those things where he could find them and spend almost every evening doing something with stamps (967); he had a large number of rare and valuable stamps and spent his time picking up stamps and putting them in the stamp books; he kept up with these things through the information the stamp collectors got and by knowing a little more about stamps than the ordinary people; that he knew all the stamps of any value throughout the world (968); that Green was inclined to get fascinated with certain things and then his interest in it would die out; he was with witness at the time of the Lindbergh flight and he became interested in aviation and built an airport at South Dartmouth; when the radio came in, he built a radio station at South Dartmouth and did some broadcasting but finally lost his interest and turned it over to the Institute of Technology in Boston; that he did not keep his interest in many things as he did in stamps; he had an interest in collecting rare currency, coins and stamps; he had a large ring given to him by Diamond Jim Brady, of New York City, who was a personal friend (971-2); witness never visited Green in New York City; that the residence at Star Island was one of the finest there (974).

On cross-examination by counsel for Mrs. Green, witness testified that she always came to Marlin with Colonel Green and would bring her maid and he would have a maid, a nurse and his secretary (979); that a common saying of Green's on many occasions was that he was by birth an Englishman, by education a Catholic, raised a Quaker, in business a Jew and by residence a Texan (979); that on many occasions he stated he took real pride in the State of Texas and his connection with it (979).

On redirect examination by counsel for Texas, witness testified that the case record for 1927 shows no address;

the one in 1922 and another in 1929 give no address; that a case history, without date, shows the address "Terrell, Texas"; that these records are made by the history taker or doctor assigned to records and some of them by the laboratory people (981); that he and Green exchanged gifts; he sent witness presents of jewelry, clocks, radios, etc. and witness would send him something unusual from the farm; there was nothing witness could buy which would attract him but he was always glad to get any of the products of the soil in Texas (984). On recross-examination by counsel for Florida, witness said Green was one of the best posted men he ever knew, carefully looked after his business affairs, discussed with witness his care in having his tax matters properly made out by experts so he could give a proper rendering to the Government in order to be fair; "I think he had uppermost in his mind that he did not want to be a citizen of three or four States at one time" (987); it was Green's opinion that citizenship in any State brought on the tax matters connected with that sort of citizenship under the laws of that particular State and witness is sure he thought about the laws of the different States in regard to their taxes; that Green went to Florida with a feeling of liberty because he had the information that Florida would not make him a citizen and not bring to bear on him the tax affairs that citizenship in that State would bring (988); that he told witness he studiously avoided going into Massachusetts at any time during the first six months of the year because it would subject him to the taxation and citizenship of Massachusetts (988).

On recross-examination by counsel for New York, the witness testified that the case history at the clinic is made from personal consultation with and statements made by the patient and personal examination (989); that the case history on Green dated January 24, 1922, reading "Doctor Pascal diagnosed traumatic arthritis, right knee, superimposed by focal infection from teeth and secondary anemia and bleeding piles" (991).

Raymond Barnett, of Marlin, Texas, testified that he first met Green about 1922 in the lobby of the Arlington Hotel in Marlin (997); that he was then a reporter on the Marlin

Democrat and had an interview with Green in which he asked him if he was going to support "Gooseneck Bill" as leader of the Black and Tan faction of the Republican Party against the Lily White faction led by Creager and Green told him he was more interested at that time in getting rid of his rheumatism than he was in politics (999); that he saw him again in 1924 and discussed local politics (1000) and when he asked him when he was coming back to Texas he said, "I am coming back to vote" (1001); that he saw him on his last visit to Marlin and found him lying in the bath room and looked "rather wasted"; that he asked him how he was getting along and he replied, "Well I am glad to be back home" (1002); that in a conversation about investing in Marlin, Green said he thought Texas as a whole was going to have a great growth and development and "he was proud of the fact that he was a Texan" (1004).

A. B. Johnson, of Marlin, Texas, testified that he is a native Texan and postmaster of Marlin; that he met Green in 1922 (1008); that he was manager of the bath house in which he bathed; that Green was there about 90 days in 1922; he saw him frequently then and again in 1924 in Marlin; he stayed there about a month on that occasion and again in 1925, '26, '27 and '35, when he made visits of approximately the same length (1010); that Green said he did not like to live in New York because it was so congested and he was so badly crippled up it was hard for him to get around—this was in 1925 (1013-14).

Garland Adair, of Austin, Texas, Editor of the Austin Dispatch, testified that he was a native of Texas, formerly a resident of Kaufman County, Texas (1016); that he was Chairman of the American Legion Committee of the Texas Centennial Commission in 1933 and the purpose of the Organization was to get a Centennial Coin passed through Congress to be sold to raise funds to build a memorial museum in Texas (1019); that they developed a Texas Centennial Seal to be sold to raise money and solicited a subscription from Green (1020-23); that he sent him Tex. Ex.

No. 15, dated November 22, 1933, enclosing a check for $100 for 20,000 of the stamps and offering to purchase a supply of the half dollars (1023); that Green was appointed a member of the Texas State Memorial Museum Commission and offered to assist in the campaign (Tex. Ex. 16—1027). Witness identified Tex. Ex. No. 17, Green's letter dated October 29, 1934, ordering 1,000 Texas Centennial Half Dollars to be sent—250 to Miami Beach First National Bank; 250 to the First National Bank, New Bedford, Mass. and 500 to the Chase National Bank, New York City (1034-6); he also identified Tex. Ex. No. 18 "A Certificate of Distinguished Service to Texas," with his letter of January 10, 1935, addressed to Green at Miami Beach, Fla., containing the postscript "In the event you prefer that the certificate should have given your residence as New York or Florida, please let me know and we will send in another" (1040), and also Tex. Ex. No. 18-A, a letter from Green to witness, stating "I desire to thank very sincerely yourself and the other gentlemen who conferred this honor upon me, and I assure you that it is greatly appreciated. However, I note that my residence is shown as Massachusetts. This is not correct, as I have never changed my legal residence from Terrell, Texas, and if it is not too much trouble, I would thank you to make the change. I am returning the Certificate under separate cover" (1043); that Green's request was complied with and Tex. Ex. No. 18-B sent him under date of January 23, 1935, stating the change would be made and "We have received your letter and the certificate and are very happy indeed to change same in accordance with your legal residence and your wishes. We say we are delighted and that is truly our feeling, for we are happy to continue to claim you as a citizen of Texas" (1045). The witness identified Tex. Ex. No. 19 as the corrected Certificate (1046-7), in which it was recited, "Certificate of Distinguished Service to Texas by Col. E. H. R. Green of Terrell, Texas, who purchased at Austin, Texas, the first Thousand Texas Centennial Half Dollar, commemorative, in 1936, of the Independence of Texas" (1047).

Counsel for Texas gave in evidence the correspondence with Governor Colquitt and Colonel Green November 10, 1910 to November 14, 1910, appointing Green Colonel on the Governor's Military Staff (Tex. Exs. Nos. 20, 21, 22—pp. 1057-60).

EDWIN J. KIEST, of Dallas, Texas, testified that he was the owner and publisher of the Dallas Times-Herald (1061-3); that he became an intimate friend of Green's about 1903-4 when the automobile was introduced into Texas; that Green brought the first one and witness the second or third (1064); that Green lived at Elm and Griffith Streets, Dallas (1065); that Green, witness and others organized the Automobile Club and Green made witness Director of the Texas Midland Railroad (1067); that he accompanied Green on inspection trips; that the annual meetings were held in his private car at Terrell because of his crippled condition (1069-70); that Green tried to have the best Railroad in the United States for the size; that all of his box cars were painted green; that he was the first to use electric headlights, etc. (1071); that he was active in the management and always trying to make improvements (1072); that he had the first experimental farm in Texas such as are now conducted under the auspices of the Agricultural and Mechanical Colleges (1072); that Green became interested in the Texas State Fair Association, of which witness was President (1074); that Green placed the first order with the Wright Brothers for an airplane and bore one-half of the expense of a lighter-than-air machine at the Texas State Fair and organized the first automobile race held in Texas (1075-6); that he and witness were very close friends and their friendship continued until his death (1079); that Green thought Texas had great possibilities, loved the State and its people; "he liked it down here because he could be himself with what he called his 'bunch'—he relaxed" (1079-80); that his mother became ill and began calling for him about 1911-12 and she died in 1916; that Green made periodical trips to New York and came back to Texas; he said his mother wanted him and he had to go (1082-3); in November, 1917, after his marriage, witness and others visited him on the yacht "United States" at Galveston (1086); that witness went with him to the Customs House, where he registered the boat as from Galveston (1087). Counsel for Texas offered Tex. Ex. No. 23, being a Consolidated Enrollment and Yacht License dated November 17, 1917, issued to the steam yacht "United States" at Galveston, Texas; Permanent Yacht Enrollment No. 1 reciting that E. H. R. Green, of Terrell, Texas, having taken and subscribed the required oath and sworn that "he was the sole owner of the vessel called the 'United States', of Galveston, Texas, etc." (1088-

1090); which certificate contained an endorsement thereon that it was issued at the Port of Galveston, Texas, November 17, 1917, surrendered New York, N. Y., June 16, 1923, because "ownership district and occupation changed" (1095), and the further endorsement that it was renewed for one year from March 24, 1919, at "Port of New Bedford, Massachusetts" (1096). The witness further testified regarding a visit to Green at South Dartmouth after his illness at the Adolphus Hotel in 1921 and described a run on the Security National Bank of Dallas in May, 1921, when Green deposited $100,000 in the Bank in which he had no interest (1109-12); that Green was never the same after his illness in the Adolphus Hotel in 1921 (1112); that his health was poor and his principal pursuits were matters connected with the estate (1114); that in a discussion with Green about the Round Hill House he said it was a shame to separate old people who had lived together fifty years and he had a notion to make an old folk's home out of the Round Hill House so that they could remain together, and again when he was at Marlin, he discussed the building and endowing of a sanitarium there for poor people (1115); that Green always claimed Terrell, Texas, as his home; when witness asked him why he signed Terrell and why he didn't advertise Dallas a little he said, "Terrell is my home—that is where I belong" (1118); that he saw him the last time in Dallas in 1935, in his private car, and talked Dallas affairs and politics and witness was surprised a little that he was so much interested in it on account of his physical condition (1120); that in the Spring of 1921, witness presented Green, who was much interested in coins and stamps, with a gold coin given to him by President Obregon, of Mexico (1124); that after his 1921 illness, witness visited him at his Star Island home about 1927 (1132), and at the Waldorf-Astoria in New York and his office (1133).

Counsel for Texas gave in evidence Tex. Ex. No. 25, being the commission from Colquitt to Lt. Colonel E. H. R. Green as a member of his staff, dated February 4, 1911 (1136-37).

Said witness further testified that after witness' visits to him in South Dartmouth and Miami, Green did not become much interested in anything; his health was the main thing he was worrying about; he wanted to go wherever he could for the benefit of his health and he was doing everything he could to benefit it (1140). On cross-examination by counsel for Florida, witness testified that Green was using the

experimental farm to find some means of getting rid of the boll weevil which was destroying the cotton in which his Railroad was interested (1148); he was also interested in the breeding of chickens (1149) and later in flowers, especially roses (1150); that prior to 1911, he was a Director in the American Exchange National Bank of Dallas (1152); that the Elm and Griffith Street building was a three-story plain brick building with some stores below; Green was sleeping there and had servants there and stayed there until he built the place on Commerce Street (1156); that this latter building was on the edge of the business section of Dallas; that he built it as a home, he had a billard room, bed rooms, pianos and organs and the building looked like the brown stone fronts up in the East (1157-58); that there was no yard or shrubbery; he had servants and a housekeeper there (1159); that Green continued to live in this place in Dallas until 1911 or 1912, when his mother called for him and he went to New York coming back occasionally (1160); that about two or three years after he went up there, he abandoned coming back (1161); that after selling this Commerce Street place to the City he did not re-establish any home in Dallas, he stopped at the Adolphus Hotel (1162); that is where the witness lives—that is my home (1163); that from the time witness knew Green when he lived in this Elm Street property he spent most of his time in Dallas (1164); that Green would not always use his private car in going to Terrell; he would go there in the early morning and come back and sleep in Dallas, doing this three or four times a week (1165); that the place where he spent most of his time, ate his meals, etc., was Dallas; Green was a Director in the American National Bank of Terrell and a Director in the American Exchange Bank of Dallas (1166); he had an interest in the Majestic Theater in Dallas which was burned and not rebuilt (1167); that his various properties were sold after 1911 (1168-69); about 1910, witness and Green went to Florida to the races, stopping at Daytona three or four days (1171-2); after 1911, Green would come back to Texas and stay two or three weeks, go back and stay three or four months—in the Spring to attend the stockholders' and directors' meetings and in the Fall for the election; after his mother's death he didn't come as frequently as before (1175-7); between 1915 and 1922, he would come three or four times a year and thereafter about two months a year down to Marlin (1179); after 1915, but more

especially after 1921, his main object in life was to try to find health (1181); that witness' visit to the Star Island house was in 1927—Dr. Buie was there but stayed only a day or two (1187); the house was in a rather exclusive section on an Island with several other houses, was elaborately and comfortably furnished and Green's wife and servants were there (1188-89); that there was no flying field, machine shops or public bathing beach there but he had a house boat and two ocean-going launches (1190).

On cross-examination by counsel for Massachusetts, the witness testified that about 1919 he sent Green at New York a painting of a Texas scene by a Texas artist for a Christmas present (1190-1201); in his letter of December 9, 1919, witness said, "As you are building a handsome home at New Bedford naturally you will decorate its walls with paintings, and I thought probably you and Mrs. Green would like to have a little reminder of Texas in your new home—hence my little Christmas gift has taken this shape (1203) (Mass. Ex. No. 24); that at the time the painting was sent, witness understood Colonel and Mrs. Green were going to live in the South Dartmouth house and not that it was to be a home for old couples—that came later (1219); that all witness then had as a basis for his letter was the talks with Green (1219).

Witness identified Mass. Ex. No. 26, a letter to Green, January 1, 1920, in which he stated, "About the middle of December I expressed to you prepaid a package containing an oil painting by Julian Onderdonk, a Texas artist with a national reputation, the painting is of a Texas scene and it occurred to me that in your new home there might be a nook where a scene from this state, where your *true* friends reside, could hang as a sort of reminder of said friends left behind when you again took up your duties in New York. I trust the painting reached you in time and in good order." (1222). The witness further testified that he remembers that Green said he was building on a piece of land in New Bedford which had been in his family—the Howland family—for 200 years (1223). The witness admitted receiving Mass. Ex. No. 27, a letter from Green, dated January 5, 1919, (evidently 1920) acknowledging the receipt of the painting, in which he said, "Mrs. Green appreciates the painting of the 'Blooming Cactus' as much as I do and we want to assure you that it will be hung in our new home at 'Round Hills', South Dartmouth" (1227); that on his visit

to Green at South Dartmouth, he pointed out a stone building in New Bedford in which he said his mother was born (1247), showed him a warehouse in which his forefathers used to store whale oil, and a blacksmith shop that he had moved to Round Hills (1248); that witness went through the "Charles W. Morgan" while Green waited in his car (1249); witness can only remember that he referred to the ground at Round Hills as having been in his family for hundreds of years (1250); when witness was there in 1924, he saw no aviation field; that the new thing Green wanted to talk about was the radio station (1251); that there was a beautifully bound library of books at South Dartmouth.

On cross-examination by counsel for New York, the witness further testified that Green never discussed with him the payment of personal income taxes but told him he filed his income tax at Terrell, Texas; that his usual routine started at South Dartmouth, from there he went to New York, usually in the month of December, then to Miami for the first of the year, then to Marlin and Dallas and then East again to New York or South Dartmouth; that when he became so crippled he could not move he stopped coming to Marlin (1269); that he saw Green in New York the last time in the Spring of 1917, when he visited his apartment there at the Waldorf-Astoria (1276); Green told him that his mother and sister had gone in with him one-third each in the floral business (1282); that witness testified before the Commissioner in the matter of the probate of the Will of Green in the Surrogate's Court of Essex County that Green had told him on numerous occasions that his legal residence was Terrell and when introduced to friends, Green would say "I am from Terrell, Texas" (1288).

J. W. Royall, of Dallas, Texas, an officer of the Republic National Bank of Dallas, testified that in 1921 he was connected with the Security National Bank when they had a run and saw Colonel Green (1304-5); the latter came to the Bank with Mr. Kiest, Mr. Reardon and Mr. Colquitt when the Bank was jammed with people withdrawing funds (1306); Green made out, signed and deposited a check to his credit in the Security National Bank for $100,000 (Tex. Ex. No. 30, dated May 11, 1921; 1307-1311); that Judge Ramsey, of the Federal Reserve Board of Dallas, made a

speech and Green followed him with a speech in which he stated that he was a citizen of the State of Texas, very much interested in Texas and he thought they were doing a very foolish thing to finish the run, inasmuch as he knew the Bank would remain open if the run was not finished, and as confidence and evidence of his faith in the Bank he had just deposited $100,000, and waved a duplicate deposit slip in his hand (1308).

On cross-examination by counsel for Massachusetts, the witness stated he was not trying to quote Green but stating the inference he drew from what he said.

On redirect examination by counsel for Texas, witness testified he did not recall Green's exact words (1314), but in his talk he gave the impression to everybody that he was a resident of Texas, interested in Texas and that the failure of this Bank would cause injury to many sections of Texas and he did not want that thing to occur (1315).

At the hearing at Fort Worth, Texas, commencing October 19, 1937, counsel for New York gave in evidence N. Y. Ex. No. 5, on the letterhead of the Green Floral Company, Dallas, Texas, July 11, 1911, addressed to Green enclosing a bill of lading covering a shipment of household goods and enclosing a list of the goods loaded in the cars which went forward July 8, 1911 (1324-1327).

Counsel for Texas gave in evidence Tex. Ex. No. 31, Treasury Department Certificate and photostat copy of Federal Income Tax Return for 1918 of Edward H. R. Green, "of Terrell, Kaufman County, Texas," from the files of the Treasury Department, bearing the signature of Green and sworn to by him before a Notary Public (1333-4).

Also the following Texas Exhibits:

Tex. Ex. No. 31-A,	a similar Certificate and Return for the year	1919
Tex. Ex. No. 31-B,	" " " " " " giving the same address	(1335-6)
Tex. Ex. No. 31-C,	" " " " " "	1920 (1336-7)
Tex. Ex. No. 31-D,	" " " " " "	1921 (1338-9)
Tex. Ex. No. 31-E,	" " " " " "	1922 (1340-1)
Tex. Ex. No. 31-F,	" " " " " "	1923 (1342-3)
		1924 (1344-5)

Tex. Ex. No. 31–G,	a similar Certificate and Return for the year giving the same address	1925 (1346–7)
Tex. Ex. No. 31–H,	" " " " " "	1926 (1348–9)
Tex. Ex. No. 31–I,	" " " " " "	1927 (1349–50)
Tex. Ex. No. 31–J,	" " " " " "	1928 (1350–1)
Tex. Ex. No. 31–K,	" " " " " "	1929 (1353–4)
Tex. Ex. No. 31–L,	" " " " " "	1930 (1355–6)
Tex. Ex. No. 31–M,	" " " " " "	1931 (1356–7)
Tex. Ex. No. 31–N,	" " " " " "	1932 (1359–60)
Tex. Ex. No. 31–O,	" " " " " "	1933 (1360–1)
Tex. Ex. No. 31–P,	" " " " " "	1934 (1362–3)
	(and attached list of various Companies from which dividends were received 1364–70)	
Tex. Ex. No. 31–Q,	a similar Certificate and Return for the year giving the same address (and similar schedule of dividends 1372–78)	1935 (1370–2)

Sommerfield Griffith Edwards, of Terrell, Texas, testified that he was in the retail lumber business, knew Green, and in 1904 sold him lumber for the chicken houses and demonstration farm near Terrell (1381-2); also sold lumber for the Green demonstration farm in 1905 and for the Green Floral Company in 1906 (1382); that Terrell is divided into three election wards and witness' office is in Ward 3; that the State and National Elections in Ward 3 for 29 years have been held in witness' office; that he has been judge of elections several times; has seen Green vote there a number of times at State and National Elections; never heard his right to vote disputed (1382-3). On cross-examination by counsel for Florida, the witness testified that he saw Green the last time in 1927, in his private car, at the foot of Moore Avenue and thinks this was the last time he saw him vote (1384).

On cross-examination by counsel for Massachusetts, the witness admitted that in his deposition in the litigation between Mrs. Green and Mrs. Wilks in New York he had testified that he could not remember whether Green voted in 1911 (1385); that Ward 3 where he voted is in the ward where his private car usually was on the railroad track.

An affidavit of the witness made November 7, 1916, (Mass. Ex. No. 33) was given in evidence (1388), in which he stated that he served as one of the election judges at the General Election in Kaufman County, Texas, Voting Box No. 15, and that at the General Elections in the years 1910, 1912 and 1914, Colonel Green, of Terrell, Texas, was a qualified voter and voted at said Box in said Elections (1389); that during those years the practice was for the man who wanted to vote to go to the ballot box with his poll tax receipt which was stamped by the election officer (1391); that if they did not have the poll tax receipt they would sign an affidavit that they had misplaced or lost it (1392).

(Mass. Ex. No. 34, Poll Tax Receipts issued in Terrell, Kaufman County, Texas, for the years 1909 to 1922, inclusive, and for 1924 and 1925, were marked for identification (R. 1393).

The witness further testified, on cross-examination by counsel for Massachusetts, that he never had occasion to investigate where Green slept at night; that he had a residence at Dallas; lived over there and came to Terrell to vote; he was supposed to vote in that ward and witness never questioned it (1395). On cross-examination by counsel for New York, the witness testified that regular voters in the County voted from some address but he does not remember what the poll list showed with reference to Green; he does not know whether or not he voted from 503 Pacific Avenue, the home of Mrs. Jarvis (1396-7).

On cross-examination by counsel for Florida, the witness said he was in Terrell when Green came over in 1904; he then lived in some rooms upstairs in the old Opera House in Terrell (1398-9); some time later Green had a home in Dallas and would go from there to Terrell (1399); after he left Terrell for Dallas, witness thinks he did not have a home in Terrell but came down in his car (1400).

On recross-examination by counsel for Massachusetts, the witness stated that in 1927 Green's private car was not parked in Ward 3 but he cannot say where it was parked

afterwards; there was a side track in Ward 3 belonging to the Midland Railroad but witness cannot say whether or not the car was parked there but knows it was parked somewhere on the Midland or the Texas & Pacific Railroad tracks running through Wards 1, 2 and 3 (1408); witness does not know whether Green ever slept in Ward 3 a single night in his life (1410).

James Branch Tartt, a resident of Terrell, Texas, testified that he first went to Terrell in 1893 and remained several years and after an absence, returned there definitely to live in 1917 (1411-12); that he came to Terrell to work for the Texas Midland Railroad and became acquainted with Green, its President (1413)—first as an accountant and afterwards as auditor and traffic manager—until 1900 (1414); Green was then living at the Harris House and witness stayed at the same place; he afterwards moved to the building known as the Opera House across from the hotel and witness moved with him (1414); Green told witness and T. E. Corley that he had rented the upstairs of the building and was going to fit it up for living apartments and they could live with him, paying the same board they paid at the hotel; the rooms Green rented were on the south side of the building—four large rooms on the second floor, the first at the top of the stairs was the kitchen and bathroom and sleeping quarters for the cook, the next room was the dining room, then a bedroom occupied by witness and Corley, and then Green's bedroom; on the other side of the hall was the Opera House; Green had a negro servant who acted as his valet and waited on the table (1415-16); the pine floors were carpeted with fine carpets and the furniture was nice; he had a new dining room table which was drawn out with a crank; witness stayed there about a year until he was married and then left; the others remained (1417); afterwards Green rented the whole second floor of the building and established his office and traffic department there and witness had his office there; Green occupied his bedroom for some time thereafter (1418); Green afterwards had an apartment on Elm Street in Dallas and then built the Commerce Street house in Dallas (1418-19); witness came in contact with Green nearly every day while stationed at Terrell between 1893 and 1900 (1419); in addi-

tion to his railroad activities, Green helped to organize and was active in the dramatic society and took quite an active interest in politics, helped finance a baseball team and military company (1420); he was a Republican and finally became Chairman of the Executive Committee (1421); witness left Terrell in 1900 and did not return until 1917; the last time he saw Green was in 1920 in the American National Bank at the time the President of the First National Bank of Terrell committed suicide; he was sitting at the table with a big stack of money piled up in front of him (1422); witness had not seen him in several years and told him he was glad to see him and Green said "I am glad to be home again" or "It is good to be home again" or something like that (1423).

On cross-examination by counsel for Florida, witness testified that the last time he knew anything positively about where Green lived was in 1900 (1425).

On cross-examination by counsel for New York, witness testified that while staying at the Oriental Hotel in Dallas, Green also had a bedroom at Moore Avenue and Virginia Street in Terrell which witness thinks was in the second ward (1425-26 and 1440).

Counsel for Texas then offered Tex. Ex. No. 32, a photostat copy of an affidavit of Edward H. R. Green made in New York City November 13, 1916, regarding a personal assessment against him as a resident of the State of New York, in which he stated, "Edward H. R. Green, being duly sworn, says, I am the person named in the annexed notice of assessment for personal estate as a resident of the City of New York for the year 1917. I am not and never was a resident of the City of New York or of the State of New York. I was born in London, England, the son of Edward H. Green, who was a resident of Bellows Falls, Vermont, and of Hetty H. R. Green his wife. In or about the year 1893 I took up my residence at Terrell, Texas, and ever since have been and still am a resident of Texas. I am and for about twenty-three years last past have been President and General Manager of Texas Midland Railroad, a corporation operating a line of railroad in Texas and having its offices at Terrell, Texas. I was Chairman of the Republican State Executive Committee of Texas for eight consecutive years beginning in or about the year 1896. During the years 1911 to 1914 inclusive I was an officer on the staff of the Governor of Texas by appointment of the Governor.

I have voted at Terrell, Texas, at every election since the year 1893, and voted there on November 7, 1916. I have paid poll taxes at Terrell, Texas, for many years last past including the year 1916. Edward H. R. Green." (1429). Also Tex. Ex. No. 33, a photostat copy of a similar affidavit dated November 13, 1916, in which he said, "Edward H. R. Green, being duly sworn, says, I am the Edward H. R. Green mentioned in the annexed notice of assessment of resident of City of New York for personal estate for the year 1917. I am sole Executor and Trustee of the estate of my mother Hetty H. R. Green. My sister Hetty Sylvia H. G. Wilks, who is also named in said notice renounced and refused appointment as an Executor and Trustee of said estate. Said Hetty H. R. Green was a resident of Bellows Falls, Vermont, and her will was probated there. I append hereto a certificate of the Probate Court of the District of Westminster, Vermont, certifying to my appointment."

and repeated the statement made in the preceding Exhibit No. 32 as to his residence in Terrell, Texas (1434-5 and 1442).

Counsel for Texas gave in evidence certificates of stock in various Companies organized under the laws of or engaged in business in the State of Texas in which Green owned stock, as Tex. Exs. Nos. 34-37 (1446-1453).

Also Tex. Ex. No. 38, a power of attorney from "E. H. R. Green, of Terrell, Texas," executed October 18, 1926, and acknowledged before a Notary Public, appointing Campbell E. Locke, of New York City, his attorney before the Treasury Department in connection with matters of taxation, especially questions relating to his income tax for the years ending December 31, 1922 and 1923 (1456-7).

Also Tex. Exs. Nos. 39, 39-A, 39-B and 39-C, being Certificates of Tax Collector of Kaufman County, Affidavit of Tax Collector of Kaufman County, County Clerk of Kaufman County, and the City Secretary and Tax Collector of Terrell, Texas, to the effect that Green had paid his poll tax and voted in the City of Terrell, Texas, for the years 1910 to 1916, inclusive (1461-1468).

Also Tex. Exs. Nos. 40 to 63 and 67 to 86, being copies of deeds and other instruments of title to realty to and from Green, from the Land Records of Dallas, Lamar and Kaufman Counties, Texas, in which Green was described as "of

Terrell'' and/or ''County of Kaufman, Texas,'' covering the period from 1893 to the time of his death (Tex. Exs. Nos. 40 to 63; 1469-1584 and 67 to 86; 1633-1698).

Also Tex. Ex. No. 64, copy of application of Edward H. R. Green, residing in Terrell in the County of Kaufman, State of Texas, and Miss Mabel E. Harlow, of Highland Park, in the County of Lake and State of Illinois, for a marriage license, signed and sworn to before a Notary Public July 9, 1917 (1585-1592).

Also Tex. No. 66, photostat copy of the Will of Hetty H. R. Green, dated March 28, 1911, proved and allowed July 22, 1916, in the Probate Court for the District of Westminster, State of Vermont, (1592-1608), and particularly Item 7, reading, ''I give, devise and bequeath all the rest, residue and remainder of the Estate of my deceased father, Edward Mott Robinson, to my beloved son Edward Howland Robinson Green, of Terrell, State of Texas, and to his heirs and assigns forever; the same to be for the sole and separate use and benefit of my said son, to the exclusion of any interest therein or control thereof by any wife whom he has or may wed.'' (1593-5)

Bryce L. Twitty testified that he was Superintendent of Baylor University Hospital at Dallas, was born four miles east of Terrell in 1898 and lived on a farm there for about ten years; as a boy he was acquainted with Green and played on the farm of Colonel Green, which was a large farm, with a two-story unpretentious farm house (1699-1702); that his father was often there to dine and Green entertained the neighboring farmers there; that his equipment was better than the neighboring farmers (1702); Green would come there for a week or two and then be away some times for several months (1703); Green cultivated the friendship of the neighboring farmers, sent them fresh meat when he killed, etc., sometimes ate with them and seemed to have a lot of people from Terrell or other places to eat with him (1706-7).

On cross-examination by counsel for Florida, the witness said he left the farm in 1910 when he was about twelve years old; that when Green was there the farmer's wife took charge of the house and supervised the cooking (1708-9).

HARRY GALBRAITH testified that he was a resident of Terrell, Texas, and editor of the Terrell Daily Tribune; in 1893 he was a reporter on the Times Star; knew Green and met him on the occasion of his first visit to Terrell in 1893 at the Harris Hotel; he was sent there to interview him about an item that had appeared in the daily news regarding his purchase of a branch of the Houston and Texas Central Railroad, known later as the Texas Midland (1731); Green told him he had bought the Railroad; that he was going to make his home in Terrell and was going to make it one of the best Railroads in the Southwest; that he wanted the best power, rolling stock, heaviest steel and best roadbed, and he proceeded to do all of those things (1732); Green then lived at the Harris Hotel for a short time and then built the Green Flats in what is known as the Harris Opera House; Green was a many sided character—he could not only run the Railroad but could "wild-cat" for oil, study astronomy, fight the boll weevil, run a chicken ranch and demonstration farm, was a patron of aviation, etc. (1733); he was public spirited and entered into the activities of the community; witness played on his baseball team; Green was end man in the local minstrels and was active in Republican politics (1734); Green had the first moving picture machine and the first automobile in Terrell; he has interviewed Green hundreds of times, went to his office every day; witness has lived continuously in Terrell since 1883; that in the late nineties or early 1900's, witness referred to Green as "Colonel Green of Terrell and New York" and Green took offense at the "New York and said Please leave that off—I am from Terrell" (1737); in 1927, he saw Green in his private car at the intersection of the main street of Terrell with his Railroad, about the reported sale of the Railroad; Green said it was so, and that the Railroad had never been a bonanza from the start and latterly had been all vanity and vexation, and besides his care of his business in the North was all that he could do and he had concluded to sell. Witness asked him if the sale of the Road meant that he was going to throw Terrell into the discard and cause him to shake the dust off his feet and he replied, "Certainly not; Terrell has been my home since 1893 and will so continue to the end" (1738).

In 1935, Green's private car came through Terrell on his way North from Marlin and witness was delegated by the Chamber of Commerce to present some resolutions of sym-

pathy and hope for his recovery to him in his private car, but they said he was too sick to receive even his Terrell friends and witness presented the resolutions to Mrs. Green on the rear platform.

So far as witness knows, no one was admitted (1739).

On cross-examination by counsel for Massachusetts, the witness testified that since his testimony in the New York Case he had consulted the files of the Terrell Daily Tribune and found that he had interviewed Green in 1927 (1748).

On cross-examination by counsel for New York, the witness testified that Green had a room engaged at the house of his neighbor, Mrs. Jarvis—directly across the street from him; that he has never seen Green there (1752). (Subsequently, at the hearing in New York City January 10, 1938, counsel for Texas produced a letter from the witness transmitting the clipping—Tex. Exs. Nos. 88 and 88-A—and stating that he had two interviews with Green on May 10, 1927, and in the second interview he made the remark to which witness testified (1805-14).

At the hearing in the Roosevelt Hotel, New York City, January 10, 1938, counsel for Texas further gave in evidence Tex. Ex. No. 89, a photostat copy of the Certificate of the Treasury Department dated September 1, 1936, covering the verification of the income tax return of Edward H. R. Green, of Terrell, Texas, for 1917 on file in the Department (1827). The Schedules accompanying the Certificate were admitted as N. Y. Ex. No. 10.

Counsel for Texas thereupon gave in evidence Tex. Exs. Nos. 90 to 274, inclusive, being copies of deeds and other instruments of conveyance to and from Green, duly executed between 1894 and 1928, and recorded in the Counties of Kaufman and Hunt, State of Texas, in which Green was described as of the County of Kaufman, State of Texas. (1848-2132.)

Also reports of the Texas Midland Railroad on file with the Railroad Commission of the State of Texas from 1893 to 1926, in which it was recited that Green's residence, as President was Terrell, Texas, in corroboration of the testimony of the witnesses Corley and Wells, who stated that he had instructed them to put in his residence as Texas (2137-2187; Tex. Exs. Nos. 275 to 275JJ).

Also Tex. Ex. No. 276, a copy of the certificate of the Comptroller of Public Accounts of the State of Texas, dated July 29, 1936, certifying that an examination of the Tax

Collector's Rolls of Kaufman County showed tax payments in the name of Colonel Green for the years 1919 to 1929, both inclusive, of a State tax of $1.50 and a County tax of 25¢ (2189-91).

Counsel for Texas also gave in evidence, as Tex. Ex. No. 277, Mass. Ex. No. 34 for identification (1393; 2365-7), being receipts issued to Green for poll tax paid to the City of Terrell and the County of Kaufman, Texas, for the years 1910 to 1929, both inclusive, for the purpose of showing the payment of poll taxes by and on behalf of Green in the years indicated (2205-6; 2215-16). The receipt for 1909 bears the stamp "Voted November 8, 1910"; that for 1911 is stamped "Voted in 1912"; that for 1913 is stamped "Voted November 3, 1914"; that for 1915 is stamped "Voted in 1916"; that for 1917 is stamped "Voted in 1918", and that for 1919 is stamped "Voted November 2, 1920" (2366).

Counsel for Texas thereupon gave in evidence Sections 2960 and 2968 of the Revised Civil Statutes for the State of Texas for 1925, exempting poll tax for persons over sixty years of age (2239-2243).

"Art. 2960 (2943) Exempt from poll tax.—Every person who is more than sixty years old or who is blind or deaf or dumb, or is permanently disabled, or has lost one hand or foot, shall be entitled to vote without being required to pay a poll tax, if he has obtained his certificate of exemption from the county tax collector when the same is required by the provisions of this title. (Id.)" (T. 2250-2259.)

Counsel stipulated that under the law Green was exempt from the payment of poll tax because of the loss of his leg but continued to pay the poll tax one year after he was again exempt because over sixty years of age (2244-5).

Counsel for Texas gave in evidence Tex. Ex. No. 280, being a copy of the certificate dated May 17, 1937, addressed to Thomas W. McDonald, Temporary Administrator, Estate of Edward H. R. Green, signed by Roy H. Palmer, First Assistant Director, Income Tax Bureau, certifying that an examination of the records of the Tax Commission of the State of New York showed that no income tax return was filed by said Green under the provisions of Article 16 of the Tax Law of the State of New York prior to the date of his death, June 8, 1936 (2264-7).

Also Tex. Exs. Nos. 281 and 281-A and B, photostat copies of letters dated November 14, 1916, from the files of Colonel

Green, signed by Charles W. Pierson, of the New York firm of Alexander & Green, personal general counsel of Green and now deceased (2269-70 and 2278), (and the corrected certificates of assessment therewith transmitted) in which Pierson said: "After a hearing before the Commissioners of Taxes today we succeeded in having the assessments of $20,000,000 and $10,000,000 against the Estate and yourself individually cancelled. Enclosed are certificates in customary form signed by one of the Commissioners (White) showing such cancellation. These should be carefully preserved" (2271).

Also Tex. Ex. No. 282, notice of assessment of tangible property of non-resident for the year 1932, "You are hereby notified that the tangible personal property owned by you and having an actual situs in the City of New York, and not forming a part of capital invested in business in this State, has been assessed for the year 1933, at $5,000" (2280).

Counsel for Texas gave in evidence Tex. Ex. No. 285 (2293), Certificate of Incorporation of the Green Floral Company executed March 24, 1909, in which it was recited, "That we, E. H. R. Green, Eugene Corley, Harry Donnelly and A. Millar, all citizens of the State of Texas, and all residing in Dallas, Texas, except the said E. H. R. Green, who resides in Terrell, Texas, have and do hereby associate ourselves together for the purpose of creating a private corporation under the laws of the State of Texas" (2294).

Also Tex. Ex. No. 286, a copy of an application for membership by Green in Lodge 5, Knights of Pythias, dated April 6, 1893, stating "his residence" as "Terrell, Texas" (2302).

Also Tex. Ex. No. 287, copy of an Agreement executed May 7, 1928, between "E. H. R. Green, of Terrell, Texas" and the Southern Pacific Company for an option to purchase his share of stock in the Texas Midland Railroad Company (2306).

Also Tex. Ex. No. 288, report of certain proceedings in the matter of the transfer tax upon the Estate of Hetty H. R. Green in the Circuit Court of New York County,

State of New York, in which said Edward H. R. Green testified (2326; 2331-2337):

"Edward H. R. Green, being duly sworn, deposes and says:

"I. That he resides at Terrell, Texas.

"II. That said decedent died on the 3rd day of July, 1916, a resident of Bellows Falls, State of Vermont, testate, and letters testamentary were issued on the 22nd day of July, 1916, by the Probate Court of the District of Westminster, State of Vermont. The facts showing the decedent to be a resident of such State are set forth in the affidavit of E. H. R. Green as to residence of decedent, verified November 1st, 1916, which is attached hereto and made a part hereof.

* * * * * * *

"Whereas, on the 22nd day of July, 1916, an instrument in writing, purporting to be the last Will and Testament of Hetty H. R. Green, late of Rockingham in said District, deceased (a copy of which is hereunto annexed) was duly proved and allowed by said Probate Court, as the last Will and Testament of said deceased:

Edward H. R. Green, Estate Witness.

"Q. New Bedford, Massachusetts?

"A. Yes, sir.

"Q. This was bequeathed to her by her aunt, Sylvia Ann Howland?

"A. Yes, sir.

"Q. You say she had no furniture or household fixtures anywhere else than at Bellows Falls at the Tucker House except for this stuff bequeathed by——

"A. That's all I know of.

"Q. You said that you were manager of the baseball club until you went to Fordham; did you go to college—Fordham College?

"A. Yes, sir.

"Q. What years were you there?

"A. I was there in 1886 and 1887.

"Q. Then where did you go?

"A. I went to Chicago to look after business properties.

"Q. How long were you in Chicago?

"A. I think it was about a year and a half.

"Q. Where did you go next?

"A. I came back East and made arrangements—went down and foreclosed a piece of railroad called the Texas Central Railroad, and which I took charge of.

"Q. That is in Texas?

"A. Yes, sir; in 1892.

"Q. What office did you take with respect to that railroad?

"A. President and General Manager.

"Q. You became President and General Manager when?

"A. February 28, 1892.

"Q. Now, isn't it a fact that after you went to Chicago in 1887, you were there until shortly before you went to Texas?

"A. It might have been three or four months with a lapse between the time that we were reorganizing the road.

"Q. Three or four months between the time when you came away from Chicago and the time you went to Texas, you mean?

"A. Yes, sir.

"Q. Where have you resided yourself since 1892?

"A. Terrell, Texas.

"Q. You have lived there ever since?

"A. Until about five years ago.

"Q. You still retain your residence there, don't you?

"A. That's where I vote, yes, sir.

"Q. You are still President and General Manager of the Texas Midland Railroad?

"A. Yes, sir.

"Q. After going to Texas in 1892, how frequently did you see your parents?

"A. I used to spend the month of August at Bellows Falls.

"Q. You spent the month of August with them?

"A. Yes, sir.

"Q. At Bellows Falls?

"A. Yes, sir.

"Q. And where in Bellows Falls?

"A. At the Tucker House.

"Q. Your father and mother would be keeping house there at the time?

"A. Yes, sir.

"Q. Do you remember the time of your father's last illness and death?

"A. No, sir, I remember the death; I didn't attend at the funeral.

"Q. How had it happened that you were not at the funeral?

"A. I was laid up sick with varicose veins.

"Q. Had you been up at any time during your father's last illness?

"A. Yes, sir, I was up twice.

"Q. Where did you go when you came up?

"A. At the house.

"Q. You mean the Tucker House?

"A. Yes, sir.

"Q. Bellows Falls?

"A. Yes, sir; we were living there.

"Q. What year was it that your father died?

"A. My father died March 19, 1902, I think.

"Q. Now, after your father's death in 1902, did you come North from time to time to see your mother?

"A. Yes, sir.

"Q. And what time of the year were you accustomed to come North?

"A. Oh, it was always in July—the latter part of July or August.

"Q. And where would you see her ordinarily?

"A. At Bellows Falls.

"Q. Do you recollect the illness your mother had in 1911?

"A. Yes, sir.

"Q. You came North at that time, didn't you?

"A. Yes, sir, she was taken sick at Hoboken.

"Q. She was lodging there at the time, was she?

"A. Yes, sir. She telegraphed for us to come up and bring Mr. Ogden up; she wanted a will drawn.

"Q. Mr. Ogden was the Texas counsel for the Green interests, was he not?

"A. Yes, sir.

"Q. And it was at that time that she made her will, wasn't it?

"A. Yes, sir.

"Q. That was made when and where, if you recollect?

"A. It was made in those Hoboken apartments on Washington Street—Twelve thirteen, or something like that, Washington Street.

"Q. Now, since 1911 and your mother's illness at that time, you have spent the greater part of your time up here, have you not?

"A. Yes, sir.

"Q. For what purpose?

"A. Straightening out and disposing of the real estate she had, which was unproductive.

"Q. Helping her in her affairs generally?

"A. Yes, sir.

"Q. What's the Westminster Company?

"A. The Westminster Company was a company organized for the purpose of handling Mrs. Green's affairs so that she wouldn't be required to sign the papers.

"Q. This company, which you handled?

"A. Yes, sir; I was President.

"Q. Now, did she come around every day?

"A. Well, I couldn't say every day, but when she would come, she would come and look in the office and see if we were working, and if we were, asking us what we wanted—she wanted to know if there was anything she was wanted for. And sometimes we would say yes, and sometimes no, and then she would go again, and we wouldn't see her in the next two or three days.

"Q. Did she sometimes stay away for considerable periods?

"A. Yes, weeks at a time.

"Q. It would be weeks at a time that you wouldn't see her?

"A. Yes, sir. She wasn't in the best of health, you know, and she wanted a rest.

"Q. Since 1911 you have not been here all the time, I suppose, have you?

"A. No, sir, I have not been here all the time. I have been looking after her business all the time.

"Q. Have you been back to Texas some part of the time?

"A. Sometimes three times a year; and Oklahoma two or three times; and California; and very often Chicago, because we have a great deal of real estate in Chicago which we have been leasing and selling.

"Q. Boston?

"A. Yes, sir. I am required to go there as trustee for the Sylvia Howland estate.

"Q. Sylvia Howland estate is the estate of your aunt, Sylvia Howland, to which you have already referred?

"A. Yes, sir.

"Q. Are you able to say whether she has been to Bellows Falls some part of every summer since 1911, when, as you say, you came up to help her?

"A. Yes, sir.

"Q. Was she there in 1915?

"A. Yes, sir.

"Q. Do you remember, Col. Green, your appointment as trustee under the will of your grandfather, Edward Mott Robinson, in Ohio?

"A. Yes, sir."

Also, from the testimony of said Colonel Green, in said proceeding the following:

"She (Hetty H. R. Green) never loaned money on call or in the 'Street.' She did not deal with the public or hold herself out to the public as having money to lend. She maintained no office and had no office force. She had no particular fund employed in or set apart for lending. Such loans as she took were paid for out of her current bank balance, which ordinarily consisted, in part at least, of accumulated income.

"After the formation of the Westminster Company the loans on collateral held by her were turned over to that company and at the time of her death she held no such loans in New York.

"The Westminster Company was incorporated under the Laws of New Jersey in the year 1911 with an authorized capital stock of $125,000. At the time of Mrs. Green's death (July 3, 1916) its stockholders were Hetty H. R. Green, 630 shares; Edward H. R. Green, 600 shares; J. H. Isbills, 10 shares; and W. K. Potter, 10 shares.

"I have been President and chief executive of the company since January 2, 1914. After that date Mrs. Green had nothing to do with the management or direction of its affairs, although I consulted her from time to time. The Company was formed after Mrs. Green's health began to fail to relieve her of care and enable me to handle active investments and matters requiring the signing of papers. Its

business activities have consisted in caring for investments taken over from Mrs. Green and making further investments. The Company took over from Mrs. Green many of her investments of various kinds, including the loans on collateral held by her. Thereafter when she had money to invest the investments would ordinarily be made by me as President of the Westminster Company and taken in the Company's name, and the amount paid would be debited to the company on her books and credited to her account on the company's books. The company did not loan money on call or in the 'Street.' From time to time as its bank balances increased faster than permanent investments were found it took over loans on collateral made by banks as Mrs. Green had previously done, but such loans were always time loans and were held by the company as investments. The company did not deal with the public or hold itself out to the public as having money to lend. The company had no particular fund employed in or set apart for lending. The company did not act as agent for Mrs. Green. Securities and other properties taken over from her were assigned or transferred into the company's name and the cost thereof, together with all moneys received from her, were debited to the company on her books and credited to her on the company's books among accounts payable and were treated as an indebtedness of the company to her. The income from investments held by the company was treated as belonging to the company and from time to time dividends were declared and paid therefrom to the stockholders.

"Windham Realization Company, Inc.

"The company was incorporated in 1912 under the Laws of the State of New York with an authorized capital of $10,000. Mrs. Green was never a stockholder of record but its capital stock was held in her interest. I am President of the company and have had the management of its affairs. Mrs. Green was never an officer or director nor did she ever have anything to do with managing or directing its affairs.

"This corporation was organized for the purpose of taking over and foreclosing mortgages in default belonging to Mrs. Green and allied interests.

* * * * * * *

"Q. Did Mrs. Green buy any notes in New York City after July 1st, 1914?

"A. No, sir.

"Q. Col. Green, did you testify on your former examination that the Westminster Company was a company organized for the purpose of handling Mrs. Green's affairs so that she would not be required to sign the papers?

"A. Yes, sir.

"Q. And was that the fact?

"A. Yes, sir.

"Q. And were you the president of that company?

"A. At the time you are talking about, yes, sir.

"Q. Well, weren't you always the president of it?

"A. I was either president or vice-president of it all the time.

"Q. Was the $125,000. of the authorized capital stock actually paid in *in* cash?

"A. Yes, sir.

"Q. Who contributed the money for the payment of the capital stock?

"A. Mrs. Green.

"Q. Did the company ever declare any dividends?

"A. Yes, sir, annually.

"Q. And were those dividends paid to Mrs. Green?

"A. For 630 shares; the balance of the dividends I received.

"Q. How did it happen that the dividends were paid to you upon the 600 shares of stock, although the purchase price of them was paid by your mother?

"A. I suppose it was because it was an arrangement my mother promised to give me for coming up here, starting me in business, I suppose. The 600 shares were given to me as a present.

"Q. Then what happened was that she paid $125,000. into the treasury of the company and gave you these full paid shares?

"A. Yes, sir.

"Q. And so far as the company required other capital from time to time did your mother furnish it?

"A. Yes, sir.

"Q. Now just what did the Westminster Company do?

"A. Took care of her property that she had in Chicago, the railroad she had in Texas, property she had in Boston and New Bedford, and looked around for investments to invest its own capital in.

"Q. Did the company engage in any business in the City of New York?

"A. Not outside of buying some investments" (2340-42; 2344-46).

Counsel for Texas gave in evidence Tex. Ex. No. 289, a Consolidated Certificate of Enrollment and Yacht License, dated December 15, 1925, issued to Colonel Green, of Galveston, Texas, New York address, 111 Broadway, New York City, New York, on the "Mabel G., of Galveston, Texas" (2347-2357) and showing a number of renewals for the years 1926 to 1937 at the Port of Miami, Florida.

Also Tex. Ex. No. 290, copy of Agreement for the sale of the yacht "United States" dated February 26, 1923, by Colonel Green, "of Terrell, State of Texas," (written over the words "New Bedford, Massachusetts") owner, to the Peninsula & Northern Navigation Company, a corporation (2371).

Also Tex. Ex. No. 291, copies of Orders issued by the Adjutant General's Department, Texas National Guard, Austin, May 15, 1914, containing a roster of the National Guard, among others, "Lieut. Colonel E. H. R. Green, Terrell," and Tex. Ex. No. 292, a photostat copy of a letter from Colonel Green's files, dated December 18, 1914, addressed to Colonel York, Assistant Adjutant General, Austin, Texas, enclosing check for $100 for a contribution to a Christmas remembrance from the Staff to the Governor (2379).

Also Tex. Ex. No. 293, copy of letter from Edwin R. York to Green January 3, 1936, Star Island, Miami Beach, Florida, the first paragraph of which reads, "My good friend Mr. A. Garland Adair, Chairman American Legion Texas Centenial Committee has just advised me of your good letter of December 23, 1935, he did more than this, he permitted me to read this letter; Texas has always been proud of her son E. H. R. Green, and we still claim you, and you cannot get away, however we will let Florida have you for a few months each year" (2381), and Green's reply, Tex. Ex. No. 294, January 6, 1936, the first paragraph of which reads, "Yes, I have one of those photographs of Governor Colquitt's Staff. I had it tinted in oil paints, suitably framed, and it now occupies a prominent place in my summer home at South Dartmouth, Mass. As I recall, it was very hot in Austin the day that picture was taken. I remember I was having an awful time getting that uniform on correctly, according to the diagram, when several other members of the Staff (perhaps you were one of them) came into my room

and offered to help me. With the combined efforts of all the gentlemen in the room I was at last pronounced properly uniformed and it was after that the photograph was taken" (2385).

Also Tex. Ex. No. 295, a photostat copy of a license for a ship radio station from the Department of Commerce on the application of "E. H. R. Green, a citizen of the State of Texas," for the steam yacht "United States" Home Port "Galveston, Texas", issued November 3, 1917, to expire November 2, 1919, containing the applicant's description, etc., as among others: "Name of Applicant, Colonel E. H. R. Green; Address, New York City; a citizen of the State of Texas; Name and address of owner of radio apparatus: Col. E. H. R. Green, New York City; Name of Ship 'United States'" (2388-2402).

Also Tex. Ex. No. 296, a letter dated March 28th, 1919, to the Collector of Customs, Galveston, Texas, signed E. H. R. Green (2403-4), the body of which read,

"I enclose herewith applications for numbers for my ten motor boats, which I use during the summer months at New Bedford, Massachusetts. These applications were sent to the Collector of Customs at New Bedford, but were returned by him with the information that they should be sent to the Collector of Customs at the port at which or nearest to which I usually reside. Therefore, I am sending them to you with the request that you assign numbers and forward to me as soon as possible."

and accompanying returns for special tax on pleasure boats for the period from April to June, 1919, signed and sworn to by Green as individual owner and all giving his address as "Terrell, Kaufman County, Texas" (2404-9).

Also Tex. Exs. 297 to 315; miscellaneous correspondence with Green and other documentary evidence, between 1909 and 1926, in corroboration of certain evidence given on behalf of the State of Texas (2409-2444).

James G. Dallas testified that he had signed Tex. Ex. No. 279, dated May 17, 1937 (2453 to 2458), as to the search conducted in his office for the voting registration record of Edward H. R. Green during the years 1911 to 1936, inclusive, while residing at 5 West 90th Street, the old Waldorf-

Astoria Hotel, the Sherry-Netherland Hotel and 111 Broadway, and that such search failed to disclose any indication that Green had registered for voting at any of said addresses; that witness was chief clerk in charge of the records of the Board of Elections, Borough of Manhattan, New York City, and his office would have the custody of all voters entitled to vote from these addresses and there would be no records elsewhere.

On cross-examination, the witness further testified that the records of his office were complete from 1870 to date.

Counsel for Texas gave in evidence, as Ex. No. 317, pertinent provisions of the Texas Statutes relating to estate and inheritance taxes, being Appendix A filed with the Bill of Complaint (2484). Also the pertinent provisions of the general law of the Commonwealth of Massachusetts relating to inheritance and estate taxation and liens securing the same, being Appendix C with said Bill of Complaint, as Ex. No. 317-A. Also the Inheritance Tax Laws of the State of Florida, the Statutes pertaining to the same and to liens securing the same, Chapter 16,015, Laws of Florida, Acts of 1933, Appendix A with Answer of the State of Florida, as Ex. No. 317-B. Also the Inheritance Tax Laws of the State of New York and the Statutes relating to liens, Appendix A with the Answer of the State of New York, as Ex. No. 317-C. Also pertinent provisions of the Federal Revenue Acts affecting estate taxation and the liens securing the payment thereof, Appendix E with the Bill of Complaint, as Tex. No. Ex. 317-D (2483-8).

William K. Potter, as a witness for the State of Texas (2489), further testified that he had caused to be made a complete appraisal of the property, real and personal, belonging to the Estate of Colonel Green in New York, Massachusetts, Florida, Texas and Vermont; that the appraisal shows no real estate in New York (2489); that the appraisal of the jewels located in the State of New York at the time of the death of Green, made by Witherbee Black, President of the firm of Black, Starr and Frost-Gorham, prominent jewelers of New York City, indicated a fair market value of $482,543.25 (Tex. Ex. No. 318; 2490-2496); that the appraisement showed coins of the value of $1,338.57 and cash amounting to $3,040 in the decedent's possession at the

time of his death at Lake Placid (2498-2500; Tex. Ex. No. 319); that the appraisement of the collection of stamps located in the State of New York made by Walter S. Scott, indicated a value of $1,095,316 (2502-2506; Tex. Ex. No. 320); that the appraisement of certain miscellaneous tangible property consisting principally of furniture, desks, cabinets, etc., amounted to $982.00 (2507-10),—making the total appraised value of the physical properties situated within the State of New York $1,583,221.82 (2510-18; Tex. Ex. No. 321). The witness further testified, as shown by the summary, that the total value of the intangibles of the decedent at the time of his death, including accrued income thereon, was $35,831,303.69 (2526-2529). Said witness further testified that a calculation of the deductions from the gross estate showed debts $912,133.29, of which amount $872,530 appears in the New York accounting and the remainder in the Massachusetts accounting; administration expenses to January 2, 1938, $1,319,760.78, of which $1,259,666.57 appears in the New York accounting and the remainder in the Massachusetts and Florida accounting (2600-2); that the next item of deduction is future administration expenses, of which $1,275,000 is an estimate for commissions of Executors and Administrators based on the New York law for the three Administrators, which amount is about one-half of that permitted by the Statute for commissions (2602-3). The next item is $500,000 which has been calculated for future additional administration expenses (2604); and that the total of these debts, present and future administration expenses is $4,006,894.07 (2605).

On cross-examination by counsel for New York, the witness testified that the item of debts did not include any personal income taxes, because no such taxes had been paid and no allowance has been made in the statement of debts for any personal income taxes which may be due to New York or to Massachusetts in the event Green was found to be a resident of either State during his lifetime (2606). The witness further testified, in answer to questions by counsel for Texas, that the item of $500,000 includes an estimate for counsel fees (2609); that from his knowledge of the affairs of the Estate and the appraisals made in the Court proceedings, he knows of no other property of the Estate and of no other deductible items (2612). The totals, as summarized by the witness are as follows:

Gross Estate

New York:			
Real Estate			None
Personal Property (tangible)			
Jewels		$482,545.25	
Coins—Collection	$1,338.57		
Cash in decedent's possession	3040.00		
		4,378.57	
Stamps		1,095,316.00	
Miscellaneous		982.00	
Total—New York			$1,583,221.82
			$1,583,221.82
Massachusetts:			
Real Estate			$128,000.00
Personal Property (tangible)			
Jewels		$864,119.00	
Coins		1,234,921.82	
Stamps		203,132.00	
Miscellaneous		68,534.60	
Total—Massachusetts			2,370,707.42
			$2,498,707.42
Florida:			
Real Estate			$162,500.00
Personal Property (tangible)			
Coins		$4,039.70	
Miscellaneous		55,737.10	
Total—Florida			59,776.80
			$222,276.80
Texas:			
Real Estate			$2,220.00
Vermont:			
Real Estate			$6,500.00
Total Real Estate and Tangibles			$4,312,926.04

Intangibles

Securities, straight account	$8,524,709.32
Chase National Bank Decedent's checking account	261,042.20
Decedent's cash interest in Customers principal account	5,408,770.15
Decedent's cash interest in Customers income account	217,152.99
5th Avenue Bank	16.08
Due from Green Estate, Inc., Open account	5,907,483.93
Accrued interest on Open account, Green Estate, Inc.	27,896.45
Accounts Receivable	1,702.63
Decedent's one-half undivided interest in Customers Securities account	15,407,104.86
Bank account—New Bedford, Massachusetts	28,555.08
Bank account—Miami Beach, Florida	46,870.00
Total Intangibles	$35,831,303.69
Total Real Estate and Tangibles	4,312,926.04
Gross Estate	$40,144,229.73

Deductions

Debts		$912,133.29	
Administration Expenses to date	$1,319,760.78		
Estimated Future Administration Expenses:			
Executors' and Administrators' commissions	1,275,000.00		
Other Administration expenses	500,000.00	3,094,760.78	4,006,894.07
Net Estate			$36,137,335.66

(2014-15)

On cross-examination by counsel for Florida, the witness further testified that Colonel Green had paid personal income tax in New York but never paid any such tax in Massachusetts, Florida or Texas (2616).

Counsel made a statement for the record regarding the appointment in New York of a Temporary Administrator by the Surrogate's Court of Essex County, New York, October 9, 1936 to January 3, 1938 (2524-7).

Thomas Witter Chrystie, on behalf of the State of Texas, testified that he was Special Administrator of the Estate of Colonel Green in Bristol County, Massachusetts; that he caused to be made an appraisal of the real and personal property located within the State of Massachusetts as of the date of the death of Green by three appraisers appointed by the Circuit Court of Bristol County; that their appraisal of the interest of Green in the real estate was $128,000; that as to the property inherited from his mother, it was one-half and as to the properties purchased after his mother's death, it was a whole interest; that this real estate was located in the Town of South Dartmouth, Bristol County, Massachusetts (2532, 2534, 2537, 2543-4; Tex. Ex. No. 322).

Counsel for Massachusetts and Texas agreed that the Round Hill mansion was on land jointly owned by Green and his sister; the other improvements were on land owned by him (2543). Said witness further testified that the buildings on lands owned by Green outright were a family house for employees near the gate, the power plant, Blimp dock, portion of the air field, and the radio station and "Whaling Enshrined" are on lands inherited (2543-4); that there were a dozen farm outbuildings on land that Green purchased; that altogether there were approximately 60 buildings (2544); that the jewels found within the State of Massachusetts at the time of Green's death were appraised at $864,119 (Tex. Ex. No. 323; 2544-6); that witness found them in the South Dartmouth house when he was appointed in October, 1936, and for purposes of the appraisement they were conveyed to Boston (2547); that according to the appraisement, the market value of the coins, paper money and paper currency found in the South Dartmouth house was $1,234,921.82 (2548, 2550; Tex. Ex. No. 324).

On cross-examination by counsel for Massachusetts, the witness testified that the articles just described were found

by him in the safety deposit vault in the cellar of the South Dartmouth house when he became Special Administrator (2553).

On further examination by counsel for Texas, he testified that the appraised value of the stamps in the vault in the Massachusetts house at the time he took possession was $203,132 (Tex. Ex. No. 325; 2554); that he also found miscellaneous items in the South Dartmouth house at the time of his appointment which were appraised at $68,534.60 but does not know whether they were there at the time of Green's death (Tex. Ex. No. 326; 2558-2562); that these items consisted of furniture, paintings and other tangible personalty in the Round Hills residence, personalty in the outbuildings and at the South Wharf, Pandanaram, Massachusetts.

The witness further testified that he was appointed Special Administrator by the Probate Court of Bristol County, Massachusetts, October 21, 1936, and the same day proceeded to the Round Hill house and made an examination, saw the collection of jewels, stamps, coins and currency; that the house was then in charge of the widow, Mrs. Green, who continued to live there until December 8, 1936; that all of these valuables were in the vault in the cellar of the house and Mrs. Green had the combination (2563). The witness further testified that the total value of the property received by him as Temporary Administrator in Massachusetts was $2,498,707.42, including the real estate valued at $128,000 (2564). On cross-examination by counsel for Massachusetts, the witness stated that a list of personal property not contained in the Round Hill mansion showed eleven automobiles bearing Massachusetts license number plates (2566); the details of the automobiles are given in Tex. Ex. No. 326, pp. 291-2 (2570).

Counsel for Texas gave in evidence Tex. Ex. No. 327, the Report of the Appraisers and Application for Compensation in the County Judge's Court for Dade County, Florida, in re: Estate of Edward H. R. Green, Probate No. 8482 (2586-7), containing the following items:

"1. Checking account in Miami Beach First National Bank, Miami Beach, Florida $46,870.00
2. Fractional currency, Texas Centennial half dollars, silver certificate sheets, old coins, etc. (See Exhibit A) 4,039.70
3. Four boats (See Exhibit B) 10,500.00

4. Furniture, furnishings and equipment (See Exhibit C)	15,237.10
5. Lots 21, 46 and 22, Star Island, Miami Beach, Florida (Exhibit D)	100,000.00
6. Acreage—W. ½ of S. E. ¼ of N. E. ¼ of Section 34, Range 53 South, Range 31 E., Dade County, Fla. (See Exhibit E)	2,500.00
7. Property subject to an agreement for deed to Fogal Dry Dock and Storage Company (See Exhibit F)	60,000.00
Total	269,146.80

That from the public records of Dade County, Florida, there has come to their knowledge an agreement for deed and certain mortgages:

8. Agreement for deed from E. H. R. Green to Fogal Dry Dock and Storage Company (See item 7 and Exhibit F)	
9. Mortgage on Lot 1, Block 69, Ocean Beach Addition No. 3, Miami Beach, Florida, (See Exhibit G)	5,107.50
10. John Sewell mortgage (See Exhibit H)	25,000.00
11. Fogal Boat Yard, Inc., mortgage (See Exhibit I)	16,034.67
Total	$46,142.17

That they are advised and believe that the originals of said agreement for deed, mortgages and notes secured thereby are not in the possession and control of the Ancillary Administratrix, but are outside the State of Florida;

That there has come to their knowledge holdings in certain Florida corporations:

12. Stock holdings and memberships in Florida corporations (See Exhibit J)	$17,000.00

That they are advised and believe that the stock certificates and membership certificates evidencing the said stock holdings and memberships are not in the possession or control of the Ancillary legal representative, but are outside the State of Florida."

Counsel for Texas also gave in evidence inventory and appraisement of the appraisers appointed by the County

Court of Kaufman County, Texas, of 111 lots valued at $20 each, $2,200 (Tex. Ex. No. 328; 2589-94).

Also as Tex. Ex. No. 329, an appraisal under the Federal Estate Tax Law of real property in the State of Vermont, consisting of an undivided one-half interest owned by the decedent, valued at $6500 (2595-7).

Henry F. Long testified that he was a resident of and Commissioner of Corporations and Taxation for the State of Massachusetts and had been such since 1920, having charge of all tax matters of the Commonwealth, and has become familiar with calculations of both Federal and Massachusetts State taxes (2627-8); that he had prepared a calculation based upon a net taxable estate of $36,137,335.66 of the amount of the Federal Estate tax under the Acts of 1926 and 1935; that the total under the 1935 law would be $22,769,761.61,—and under the 1926 Act $6,560,967.13,—and the 80% credit to which the Estate would be entitled would be $17,520,987.93 (2629-30 and 2693); that assuming the correctness of the estimate of the assets and deductions of the Estate already given in evidence and that all real estate and personal tangible property is located as has been proven, the inheritance and estate tax due the Commonwealth of Massachusetts if Colonel Green died domiciled within that Commonwealth would amount to $4,947,008.59; and based upon the same assumption, the Commonwealth of Massachusetts would claim as estate and inheritance taxes if Colonel Green had died domiciled in some other State $326,700; that he also is familiar with the estate and inheritance tax laws of the State of Vermont and based upon the same assumption and the evidence introduced as to the amount and location of the various items in the Estate and assuming that Colonel Green died a non-resident of the State of Vermont, the inheritance and estate taxes due that State would amount to $325 (2691-2).

On cross-examination by counsel for Mrs. Wilks, the witness testified that the United States Government, under the Federal law, would have a lien on all of the property of the Estate for the amount of the tax and that the Commonwealth of Massachusetts would also have a lien under the Massachusetts law on all property within its jurisdiction belonging to the Estate for the amount of its tax (2631).

On cross-examination by counsel for New York, he testified that in arriving at the total tax collectable by Massachusetts he had not allowed anything for taxes which might be collectable by New York, Florida and Texas on a non-resident basis (2633); that the figure given does not represent what the claim of Massachusetts for taxes against the Estate would be in the event that non-resident taxes were imposed by New York, Florida or Texas, and furthermore witness does not construe the law of Massachusetts to give the estate of a resident of Massachusetts credit for taxes on real estate situated in Florida or that the estate would be entitled to the Federal credit for Federal taxes imposed upon tangible personal property having its situs in New York, or on real property situated in Texas or upon tangible property having its situs in Florida; that the State of Massachusetts has made a claim against the Green Estate for personal income taxes due by Green in his lifetime but the amount has not been calculated (2634-5); that this claim was filed in 1936 but no effort was made to collect it before the death of Green because it was in the nature of a demand to file a tax return; that under the statute of limitations the claim can be enforced at any time during the year and the latest period would be September 1st of the second year following (2637); that this claim covers the years 1934, 1935 and 1936 up to the time of his death; the period before that is barred (2638).

In response to questions by counsel for Massachusetts, the witness testified that he was a member of the Bar of Massachusetts and that under the law of that State if Green were found to be domiciled in Massachusetts, the Commonwealth under its taxing statutes would claim a lien upon all of the intangible property of the Estate to satisfy its tax claim (2638); that he would assume that the intangible property would be in their jurisdiction wherever it was located but that Massachusetts could not enforce a lien against property outside of the Commonwealth (2639); that he had made an investigation in his official capacity and concluded that Green was domiciled in Massachusetts and therefore he determined to proceed to collect the tax which would be due the State; that on the assumption that Green was domiciled in Massachusetts, he was making an effort to collect the amount of tax claimed and that if Green was found to be domiciled in Massachusetts, that State would assert a lien against the property of the Estate other than tangible per-

sonalty and real estate wherever such intangible property is located and endeavor to collect the tax (2690-3).

GEORGE H. SHEPPARD testified that he was a resident of Austin, Texas, and Comptroller of that State in charge of the computation, assessment and collection of inheritance and State taxes against the estates of decedents (2673), and thereupon he further testified as follows: Assuming that Colonel Green died a resident of Texas on the 8th day of June, 1936, and left an estate consisting of tangible personal property situated in New York, valued at $1,583,221.82, and of real estate and of tangible property situated in Massachusetts valued at $2,498,707.42, and of real estate and tangible property situated in the State of Florida valued at $222,276.80, and of real estate situated in Texas in the amount of $2,200, and real estate in the State of Vermont valued at $6,500, and of intangibles valued at $35,831,303.69, making a total gross estate of $40,144,229.73, and that the deductions against that estate amounted to $4,006,894.07, leaving a net estate taxable Federally of $36,137,335.56, the Texas tax would be $4,685,057.73 (2678).

WILLIAM MCCRAW testified that he was the Attorney General of the State of Texas and the Chief Law Enforcement Officer of that State and the only person authorized under the Constitution and Laws of the State to bring a suit in the name of the State; that George H. Sheppard is Comptroller of Public Accounts and charged with the collection of estate and inheritance taxes (2694-5); that witness and Mr. Sheppard made an investigation of the domicile of Colonel Green at the time of his death and reached the conclusion that he was domiciled in Terrell, Kaufman County, Texas (2695-6); that at the request of the said Comptroller he has made an effort to collect the estate and inheritance taxes which may be due the State if Green died domiciled there and it is his intention to do all in his power to effect the collection of the same out of the property of the Estate wherever he may come upon it (2696); that based upon the computation already given in evidence, if Green died domiciled within the State of Texas, the amount due that State for estate or inheritance taxes would be $4,685,057.73 (2696),

and if he died domiciled in some other State, nothing would be collectible (2697).

Llewellyn B. Duke testified that he was Assistant Attorney General of the State of Texas and authorized to act for the Attorney General; that he is the titular head of the tax desk in the office of the Attorney General; that according to his understanding of the laws of Texas, if a decedent dies domiciled in that State, the State would assess and endeavor to collect a transfer or inheritance tax against his estate and would have a lien upon the property of such decedent wherever located and that the State of Texas would endeavor to collect the taxes and enforce the lien (2698).

Seth T. Cole testified that he was Special Assistant Attorney General of the State of New York and has been counsel for the Tax Commission from August 1, 1908 to July 15, 1937 (2699-2700), and is conversant with the laws of New York relating to inheritance and estate taxes and the manner of collecting the same; that assuming that the appraised valuations, deductions, location of properties as given in evidence to be correct and that Green was a non-resident of the State of New York at the time of his death, the estate or inheritance tax due the State of New York would be $257,891.30; that the State of New York is claiming in a proceeding commenced before this case and now pending in the Surrogate's Court of Essex County, New York, for the purpose of fixing the estate tax upon the Estate of said Green, in which case witness is counsel, that Green died domiciled in the State of New York (2700); that but for the institution of this suit in the Supreme Court of the United States, the State of New York would have proceeded with its efforts to collect the tax; that the claim of the Tax Commission of the State is and always has been that Green was domiciled in the State of New York at the time of his death and that his Estate was subject to estate taxes under the laws of that State; that the law of the State imposes a lien upon all of the property of a decedent for the amount of the New York tax, but whether or not New York has the power to impose a lien upon property which does not have a situs within the State so that it can be reached by process of the Courts of New

York State, is a legal question concerning which lawyers might differ; that the fact is that the property and estate of Green within the State of New York at the time of his death is subject to the authority of the Courts of that State and was more than ample to cover any tax that might be assessed by the State of New York upon his Estate, so that there would be no question that if New York assessed its tax against the Estate of Green on a domiciliary basis, it would collect the tax (2702).

Thereupon said witness further testified: I have computed the amount of estate tax that would be due the State of New York under the provisions of Article 10-C of the tax law of that State in the event Colonel Green died a resident of that State, by using figures which were testified to and which appear in the record of this proceeding as follows: I have taken the New York real estate and tangible personal property valued at $1,583,221.82 and have added to that the sum of $35,831,303.69, representing the value of all of the intangibles owned by Colonel Green at the time of his death, which gave a total New York gross estate of $37,414,525.51. For the purpose of arriving at the net estate, I have eliminated from the total deductions figure of $4,006,894.07 the sum of $392,455, representing deductions attributable to real and tangible personal property not situated in the State of New York, which left a figure of $3,614,439.07. The State of New York has assessed personal income taxes against Colonel Green for the years 1919 to 1936, inclusive, which with interest up to the time of Colonel Green's death amounted to $920,827.35.

I have added that to the other deductions, which made the total deduction $4,535,266.42. Taking that item from the New York gross estate, I found a New York net estate of $32,879,259.09. I then allowed an exemption of $5,000 on account of the transfer of property to Mrs. Wilks, Colonel Green's sister, and then computed the tax and found that the amount of tax that would be claimed by the State of New York, if Colonel Green was a resident of that State at the time of his death, on the basis of the figures which appear in this record, was $5,910,301.80. (2709-10)

Frank H. Butler testified that he was Deputy Commissioner of Revenue for the State of Florida and had been

since 1931 (2661-2); that following the death of Colonel Green, the State of Florida made an investigation to determine whether or not he was domiciled in Florida at the time of his death; that they reached the conclusion that he was then domiciled in the State of Florida and they took steps to institute an action looking to the collection of the estate and inheritance taxes due the State of Florida based upon such assumption of domicile (2704); that the witness made a calculation based upon the assumption that he was domiciled in Florida and upon the correctness of the evidence already given as to the values and locations of the various items of property belonging to his Estate and upon the theory of the Florida residence, the amount of the tax which Florida seeks to collect is $4,663,857.40, but that assuming that Green was domiciled elsewhere than in Florida, the amount of estate taxes due and owing to Florida would be $29,375.72 (2704); that but for the institution of this suit in the Supreme Court of the United States they would have attempted to effect the collection of a domiciliary tax out of the property of the Green Estate wherever they could find it, as provided under their statutes (2705).

Cary D. Landis testified that he was the Attorney General of the State of Florida; that in so far as the State of Florida is concerned, under the taxing laws of the State of Florida, if it is finally determined by the Courts, in accordance with the determination which Florida has already made, that Colonel E. H. R. Green died domiciled in the State of Florida, then Florida will endeavor to assess an estate tax in accordance with the figures heretofore testified to here by Mr. Butler upon all property wheresoever the same may be found, and Florida will, accordingly, assert a lien in furtherance of the collection of such tax on all property wheresoever situated (2705-6).

Thereupon counsel for Texas gave in evidence Tex. Ex. No. 344 (2711), being a Summary of the various amounts claimed by the respective States for estate or inheritance taxes based upon a summary of the appraised value of the Estate as heretofore given in evidence and in addition thereto, a Statement with respect to the present condition of the Estate after all claims are allowed for, which is in the words and figures following:

"Estate of E. H. R. Green

Gross Estate

Real Estate and Tangible Personal Property

New York:			
Real Estate	None.		
Personal Property (tangible)	$1,583,221.82		
		$1,583,221.82	
Massachusetts:			
Real Estate	$128,000.00		
Personal Property (tangible)	2,370,707.42		
		2,498,707.42	
Florida:			
Real Estate	$162,500.00		
Personal Property (tangible)	59,776.80		
		222,276.80	
Texas:			
Real Estate		2,220.00	
Vermont:			
Real Estate		6,500.00	
Total Real Estate and Tangible Personal Property			$4,312,926.04
Intangible Property			35,831,303.69
Gross Estate			$40,144,229.73

Deductions

Debts		$912,133.29	
Administration Expenses to date	$1,319,760.78		
Estimated Future Administration Expenses:			
Executors' and Administrators' commissions	1,275,000.00		
Other Administration Expenses	500,000.00		
		3,094,760.78	
			4,006,894.07
Net Estate			$36,137,335.66

Estate and Inheritance Taxes

Domiciliary Taxes Claimed by States:		
Texas	$4,685,057.73	
Florida	4,663,857.40	
Massachusetts	4,947,008.59	
New York (New York tax calculated on a net estate of $32,879,259.09	5,910,301.80	
Total Domiciliary Taxes claimed by States		$20,206,225.52
Estate Tax, United States of America		17,520,987.93
Total Domiciliary and Federal Taxes		$37,727,213.45
Net Estate		36,137,335.66
Deficit		$1,589,877.99"

(2712-13.)

THOMAS J. MCCANN, a resident of New Bedford and a member of the Fire Department of that City, testified that during 1930, as the result of a request from St. Luke's Hospital, he went to Round Hill about July 31, 1930, was taken up to Colonel Green's bedroom and gave him a blood transfusion of about a quart; several times later that year he saw Green and about two or three months afterwards he saw him in front of Kelleher's Drug Store in New Bedford and Green called him over and inquired about the state of his health and witness inquired about his and asked him how long he intended to stay; he replied "Not very long; I only come here on account of my health and I am going South pretty shortly" (2715-17); that he saw him two or three times again the same year and on one of those occasions, witness expressed curiosity as to how he got the title of "Colonel" and he told him he was a Colonel on the Staff of the Governor of Texas and witness said he could not understand how a rock-ribbed Republican like him could get such a position in Texas and Green said "That's something you don't understand; I belong to Texas, I make them or break them down there; I can get pretty near anything I want" (2718).

On cross-examination by counsel for Massachusetts, witness testified that on one occasion Green told him he was grateful that he gave him the blood and said he would like to do what he could for the people of New Bedford and he mentioned that the activities at Round Hill were for the people of New Bedford; this remark was made in connection with his expression of gratitude for what witness had done for him (2720).

HAROLD WINSLOW testified that he was a lifelong resident of New Bedford and was City Auditor; in 1922, he was Chairman of the Republican City Committee; that a vacancy occurred in the Congressional Office due to Congressman Walsh accepting a Judgeship in the Superior Court of Massachusetts and witness called upon Green, with the knowledge of some other members of the Committee, in connection with that vacancy and told him the Committee and a good many other people were anxious to have him consider being the Republican candidate for Congress from that District and felt sure if he would run he would receive the nomi-

nation which was equal to an election; that they all knew he had been a staunch Republican down in Texas (2724-5); that Green was well known around New Bedford and would have had no trouble being elected; he said, "It is a very great honor; they never offered me that in Texas, probably because if they gave me the Republican nomination I would get licked anyway; but it is impossible for me to do so because I am a resident of Texas;" witness said, "Well, Colonel, that can be easily changed—all you have got to do is to go in your car down to the Town Hall and declare your residence in Massachusetts" and he looked at me and smiled and said, "It would cost me a great many times more than I would ever get for my salary as Congressman;" this was practically all the conversation and showed he did not care to change (2725). Subsequently, witness became Postmaster of New Bedford and around 1927, '28 or '29, Congressman Gifford brought a delegation of Congressmen from Washington to New Bedford to study the tariff needed by the mills. Witness took them to Green in the afternoon and later to the club for dinner; among the delegation was a Congressman from Texas and Green seemed to be very much interested in him and very pleased to meet some Congressman from his own State (2727).

G. LeRoy Bradford, of Fairhaven, Massachusetts, near New Bedford (2732), testified that in the late Summer of 1925, when he was employed by the "Mercury," the Managing Editor sent him to interview Green about a movement by some of the residents of Dartmouth to elect him a Library Trustee or to some honorary position and Green "grinned" and said, "It would be rather strange if they elected a legal resident of Texas to an office up here" (2734).

On cross-examination by counsel for Massachusetts, the witness testified that Green knew he was a newspaper man; witness did not know of any desire on Green's part that in all publicity he be described as of "Terrell, Texas," but heard him frequently refer to Terrell, Texas, in newspaper interviews (2735).

On cross-examination by counsel for Florida, the witness testified that Green also spoke of Star Island, Florida; witness was talking to him about the cup that he was going to offer for the races in the New Bedford Harbor and Green

said, "The fellows down home get a great kick out of the outboard races" (2735); he was then talking about Star Island, where the original cup was made (2736). On another occasion, after the arrival of a hydroplane from Miami, designed by a Miami man, and Mayor Ashley was prevailed upon to go up in it, Green said, "The plane came from down home" (2737).

JOHN NEWINGTON testified he had been engaged in the electrical supplies business in New Bedford since 1921; that he first met Green the middle of 1921 or 1922; there was a local broadcasting station being established here and he called on Green at Round Hills to arrange a schedule to eliminate interference, but was unsuccessful (2738-42); the conversation led to Green purchasing a small electric car that would pass through the doors of his house (2742). The invoice for this car was given in evidence as Tex. Ex. No. 345 (2744-5), and also a photograph of the car, with Green in it, was given in evidence as Tex. Ex. No. 346 (2746). Witness continued to sell him until 1928 or 1929; Green would visit his shop and witness would go to Round Hills; he sold him supplies for many apparatus, including a complete laundry equipment for his Miami, Florida home (2748); that in the course of their acquaintance there were frequent references to his different domiciles and he made reference to Florida, Massachusetts and Texas as his "home" and told witness he was a legal resident of Terrell, Texas; in the course of a casual conversation with him, Green said he was selected for a high political office in Texas and that he paid his poll tax there (2749); that he was a citizen of the State of Texas; that he wanted to operate his radio station while he was on the ground—during the season while he was here—and the Government would not allow him to operate part time and hold his license (2750); that during the years he dealt with Green, the latter used the South Dartmouth place as a Summer home and outdoor laboratory; that he used the words "proving ground" quite frequently in connection with his activities around there (2752).

On cross-examination by counsel for Massachusetts, witness testified that his relations with Green were both business and personal and he spent many evenings with him; that he held up to him as an example of electric efficiency a

man named Garrity in Texas whom he thought a great deal of (2756); that Green used the word "home" in connection with Round Hills when he had the Neon sign put on top of his house there; he said he wanted it for the top of his home; when he put in the ventilating system he stated he wanted it for his home there (2758).

On cross-examination by counsel for Florida, the witness testified that Green, when he was building his Miami home, told him he was building his home there so he could eventually retire there due to climatic conditions; his statements indicated that he was building a beautiful home where he expected to wind up his days; that the electric laundry for this Miami house cost about $16,000 (2761); that his interviews with Green dropped off somewhat after 1928; he was obliged to discontinue the radio and later his interest in these various activities there abated (2762); he was building up his home in Florida while his activities in South Dartmouth were declining (2763); he showed witness the plans of his Florida house, which was of Spanish architecture, and he planned to spend three-quarters of a million dollars there; he spoke of it in some detail and wanted witness to go down there and put in the electrical equipment for him (2764); he stated the airport was a disappointment to him (2765); he said New York was the place where he transacted his business while in transit between Massachusetts and Florida (2767). The witness further testified in response to questions by counsel for Massachusetts that his conversations with Green ceased about 1929 (2770).

Counsel for Texas gave in evidence as Exs. Nos. 348 and 349, photostat copy of letter from Green, 111 Broadway, New York City, June 8, 1921, to the Scientific American Compiling Department, New York City, transmitting a biographical sketch of Green for the Encyclopedia Americana, corrected in his handwriting (2774-76), reading: "Green, Edward Howland Robinson, American capitalist; born in the Langham Hotel, London, England, 22 Aug. 1868, son of Edward Henry Green and Hetty Howland Robinson. His earliest paternal ancestor in America was Percival Green, who with his wife, Ellen, came to New England from London in 1635 and settled in Cambridge, Mass. Mr. Green's mother was descended through her father, Edward Mott Robinson, from Rowland Robinson, a native of Cumberland County, England, who came to America in 1675 and settled in Rhode Island, and through her mother, Abby

Slocum Howland, from Henry Howland, who came to America in 1621 and settled in Dartmouth, Mass. Mr. Green was educated in the public schools in New York City, the high school at Bellows Falls, Vt., and Fordham University, class '88. He then studied law, paying special attention to the statutes pertaining to real estate and railroads. After being admitted to the bar he identified himself with his mother's properties, commencing as a clerk in the office of the Connecticut River Railroad. He was 21 years of age when the Ohio & Mississippi Railroad's stockholders elected him a director and president. In 1893 he visited Texas and purchased an interest in the Houston & Texas Central Railroad, then one of the important railroad systems of that state. When he was 24 years of age he was elected president of the Texas Midland Railroad, and at that time was distinguished as being the youngest railroad president in the United States. Just at this time the Texas Central Railway was placed in the hands of receivers, and he acquired the northeastern division of that road, reorganized it and made it part of the Texas Midland Railroad. He then applied himself to gaining a knowledge of the railroad business from the ground up and by his energy has made it the model road of Texas, and at the present time it is one of the most valuable pieces of transportation property in the South-west. He has introduced many improvements, among others, he extended the road so as to connect it with trunk lines, brought the equipment thoroughly up-to-date and was the first to introduce electric headlights for locomotives in Texas. He is now one of the principal owners of the Texas Midland Railroad. He was also connected with the merging of the National Bank of Dallas, American Exchange National Bank and the Exchange National Bank into the American Exchange National Bank of Dallas. He was commissioner of the St. Louis Exposition in 1904. Mr. Green makes his residence in Terrell, Tex., and has entered actively into politics in that state. A staunch Republican, he became the party's candidate for governor and was a delegate to national conventions. He was chosen chairman of the Republican State Committee. Governor Colquitt of Texas appointed him Colonel on his staff in January 1911, and he was reappointed on 16 Nov. 1912. He is director in many financial institutions in Texas and the East, among others being the Seaboard National Bank, New

York Produce Exchange Safe Deposit & Storage Company, the American Exchange National Bank of Dallas, etc. etc. A few years ago at the request of his mother he came to New York to assume the financial responsibilities so long borne by herself, and at her death, on 3 July 1916, he became sole trustee of the Hetty H. R. Green estate. He takes a keen interest in outdoor sports, fishing and yachting. In October 1916 he purchased the yacht United States on which he expended large sums for alterations, after which it was said to be one of the largest and handsomest boats afloat. He is a devoted tarpon fisherman and organized the first tarpon club in Texas. Another hobby is flowers. In Dallas he is interested in a huge nursery where everything from a pear tree to an American beauty is grown. He early became interested in aviation and organized an aviation club. He is a lover of art, music, literature, science and the drama. He has one of the best collections of first editions of great authors in the United States, and is considered to be one of the five largest stamp collectors in the world. He belongs, among others, to the following clubs and associations: Union Aero Club of America, New York Athletic, Indian Harbor Yacht, Columbia Yacht, The Atlantic Yacht, New Bedford Yacht, Dallas Club, Aerial League of America, New England Historic Genealogical Society and the Chamber of Commerce of New York. He married on 10 July 1917 Miss Mabel Emerson Harlow, of Highland Park, Ill., daughter of the late Capt. George H. Harlow of Gloucester, Mass. Captain Harlow used to own a fleet of fishing boats which sailed between Gloucester and the fishing banks off Newfoundland. Mr. and Mrs. Green spent their honeymoon on board the yacht United States. They visited 'Round Hills,' the ancestral Howland farm at South Dartmouth, Mass., and were so charmed with the picturesque location that Mr. Green decided to erect a house there where he expects to spend a part of each summer" (2776-2780).

Also, as Tex. Ex. No. 350, a letter from Green dated June 8, 1921, to Joseph D. Sawyer, of The Century History Company, Inc., New York City, reading, "I enclose herewith information concerning my American Ancestors, also a short biographical sketch of my life, which I think will give you all the information you are seeking. I note that before any use is made of the material you will notify me so that

I may be in a position to give my assent to its publication" (2781), and enclosures therewith, as Tex. Exs. Nos. 350-A and B, the former being substantially the same as the previous sketch for the Encyclopedia Americana (2783-7).

ELAINE M. CHINN, of New Bedford, Massachusetts, testified that she was employed by Green in 1934, as office manager, remained in his service until the time of his death and is still employed by the Estate; that she took care of the pay rolls, checked the bills and had a power of attorney to sign pay checks in connection with the Round Hills house (2789). The witness identified certain applications for registration of motor vehicles dated January 1, 1936, in which after the words "Massachusetts residential address" was typed "Round Hills, South Dartmouth, Massachusetts," but no "legal address" for non-resident was given (2790; Mass. Ex. No. 356); that the witness succeeded Miss Minna Cayton when she entered Green's employ in 1934 and received from her certain written instructions regarding Green's residential address; that this paper directed that "Terrell, Texas," was to be put on papers for his legal residence (2792); that witness did not make out the applications for registration, Mass. Ex. No. 356; they were made out by the Insurance Company; the year she made them out "Terrell, Texas," was put in as the legal residence (2793).

GEORGE JOYCE, a resident of New Bedford, Massachusetts, testified that he was employed by Green as house engineer from the Summer of 1923 up to the time of his death at the Round Hills house; that as a rule Green would spend at Round Hills the portion of the year from July 1st to some time in December; there was some variation in the time he left and for a few years he came in June (2795); that years ago he would leave for New York for awhile and then for Florida; when they left, witness would go around and close up the house, put up the storm shutters, cover the furniture and pictures with cloths, and the silverware would be put in the safe and the maids put away the linen (2796); that the master kitchen would be closed and the utensils put away; the draperies and hangings put in cloth

bags but the rugs were left down; during the months Green was away the house would be kept heated, for the seven persons remaining there to keep the pipes from freezing and the paint from scaling off (2797-99). Witness further testified, in answer to questions by counsel for New York, that towels were placed over the windows to keep out the water when there was a rain storm from the Northeast (2802); that when Green left in the Fall, he would take with him about 40 trunks and bring them back in the Spring.

JOSEPH EPSTEIN, of New Bedford, Massachusetts, a newspaper reporter (2806-8), testified that he knew Green and had interviewed him on various occasions and heard him discuss his residence in 1929-30 and in 1933 or 1934 (2808); the 1929 conversation was the day of the market crash in September; witness drove down to interview Green and found him near the swimming pool; Green picked up a telegram and said, "What do you think of this damn little fool down home—wants my permission to get married"; that his recollection is the telegram was from Dallas, Texas (2809). In 1930 he had a conversation with him at Star Island, Florida, in the study of his home there and asked him when he was coming North and he said he did not know when he was going North because he might "go home" before starting for the North; he did not mention Texas but witness took it for granted he meant Texas; he understands he did not go to Texas that year (2810); that in the conversation in 1933 or 1934, he asked Green why he did not run for Mayor of New Bedford and Green said, "I cannot run for Mayor, I am a resident down in Texas" (2811). In response to questions by counsel for New York, the witness further testified that Green had told him the doctors had said he must be in the house at four thirty because the moist air of New Bedford was not beneficial to his health; that Green did not take any interest in the social life at South Dartmouth (2819); that during the latter part of his life he asked witness not to mention his departure from New Bedford for Florida because there was a subpoena out for him in New York (2820); that on one occasion when he went to New York, Green discussed with witness what he thought of charging an admission fee for his beach at South Dartmouth to be given to charity; that when Green arrived at New Bed-

ford he came in a private train and was met by a Press Committee and photographers (2820).

Counsel for Texas thereupon gave in evidence Exs. Nos. 351 to 380, miscellaneous correspondence between Green and W. P. Allen, of Terrell, Texas, and others regarding various matters having a bearing upon the contentions of Texas (2822). In Tex. Ex. No. 351, a letter to said Allen, dated March 6, 1931, Green said, "At the present time I am trying to make up my mind just where to go; I have found that this year Florida is not the proper place for a fellow in my condition to remain. We have had nothing but cold spells and bad weather ever since we arrived, etc." (2823-4). In another letter to said Allen from Green, dated April 13, 1931, Tex. Ex. No. 366-A, he said, "I was glad to receive your letter of April 9th. I note what you say about my going to Marlin, but can only say that I do not know even yet where we are going. * * * The weather here continues rotten, rainy and chilly. Even the old settlers say they have never seen anything like it before" (2855).

In Tex. Ex. No. 369, from Green at New York City to said Allen, dated June 9, 1930, Green, in acknowledging a letter from the Federal Reserve Board at Washington granting him permission to serve as Director of certain Banks in Texas and New York, said, "My opinion is that the Federal Reserve Board knew what they were doing when they sent this letter to Terrell. Isn't a man's home town the proper place to receive such communications? If it isn't, where is?" (2861).

Luke Smith testified that he was a resident of New Bedford and an attorney at law; that he had made an examination of the Land Records of Bristol County, Massachusetts, for deeds in which the name of Colonel Green appeared and had found 32 such instruments; that in two-thirds of them Green, as grantor, was designated as of Terrell, Texas, or Kaufman County, Texas, and where such designation was not given no other appeared (2881-5).

Tex. Ex. No. 316, a photostat copy of the Bill of Sale from Edward H. R. Green, of "Terrell, Kaufman County, Texas," to the Round Hills Radio Corporation of certain radio buildings, equipment, etc., in November, 1923, was given in evidence (3790).

Thereupon, by agreement of counsel, Tex. Exs. Nos. 321,

326 and 327 were copied into the record pp. 3809, *et seq.* (see Digest 109).

No. 321 being the appraisal of the tangible personal property of the Estate of Green in the residence at Round Hills, South Dartmouth, Massachusetts; No. 326, the appraisal of the Round Hills Estate and No. 327, the Report of the appraiser of the Star Island property (p. 4052)—appraisers' history of Star Island (p. 4107); description of Star Island by appraisers (pp. 4110-12).

Special counsel for New York announced that the case involving the transfer tax on the Estate of Hetty Green was reported in 99 Misc. N. Y. 582; affirmed by the Appellate Division, First Department 179 App. Div. Reps. 890, without opinion, and that the case did not go to the Court of Appeals (4121); that the other case involving the taxability of the Hetty Green Estate for inheritance tax purposes as a nonresident, was reported in 231 N. Y. 237 (4121).

At the hearing in Miami, Florida, April 11, 1938, counsel for Texas gave evidence tending to prove:

WILBUR K. POTTER, on being recalled, testified that he went to Round Hills House from Lake Placid, New York, with the remains of Colonel Green, leaving there in the morning of June 10, 1936, and found in the mail handed to him a written notice from the Commissioner of Taxation, Henry F. Long, of the Commonwealth of Massachusetts, for the rendition of an income tax to that State; during the previous years when employed by Green, no such notice had been received from the Commonwealth of Massachusetts (7164-5).

On cross-examination by counsel for New York, witness stated that the notice had been turned over to counsel for the Estate of Colonel Green; it was the usual notice to file an income tax (7166).

Counsel for Texas gave in evidence the following Exhibits:

No. 384, a letter from Charles W. Pierson, New York, March 18, 1924, to Green, and attached clipping from a Miami newspaper referred to in the letter relating to the victory of his power boat at Havana, Cuba (7169). The newspaper clipping was headed "Texan's Power Boat

Scores in Havana"—"Colonel Green's Mary Triumphs in Sweepstakes" (7170).

Ex. No. 385, a bill of sale dated March 31, 1926, from the Fogal Boat Yard to Green, described as "of Galveston, Texas" (7172). No. 386, a list of Companies from which Green received dividends during the year 1935, from the files of Green and headed "E. H. R. Green, Terrell, Texas" (7177).

No. 387, extract from deposition of Colonel E. H. R. Green taken at Miami Beach, Florida, March 29, 1935, in the Circuit Court of the Eleventh Judicial Circuit for Dade County, Florida, Common Law, No. 14540, in the case of Waldemar Knudsen, plaintiff, vs. E. H. R. Green, defendant, taken before J. E. Kelly, Notary Public, at the residence of Green, Star Island, Florida, in which Green said (7188-9):

By Mr. McPherson:

"Q. You are Colonel E. H. R. Green?

A. I am.

Q. You are the defendant in this suit?

A. I suppose so.

Q. Where is your residence, Colonel?

A. Terrell, Texas.

Q. You maintain a winter home in Miami Beach, Florida do you not?

A. I come here every winter, yes.

Q. And you have a summer home in New Bedford, Massachusetts, do you not?

A. South Dartmouth.

Q. Will you state for the record, Colonel, about how much time you spend at these several places of abode each year as a matter of custom?

A. Well, as to the residence part, for about 30 years I have lived in the State of Texas, in the town of Terrell, and built a lot of railroads down there, and that gave me the residence of Terrell, Texas, and I was Chairman of the Republican Party there for eight years, and mixed into politics, State and National, and whenever I tried to get away they would turn around and get after me and have delegations wait on me, and I still claim it, and they appointed me the other day as Commissioner of the Centennial they are going to have next year. I have been buying their half dollars.

Q. How many months out of the year, as a rule, do you spend in Massachusetts.

A. Well, it is about six.

Q. Six months.

A. Six months.

Q. And you spend substantially the remaining six months of the year in Miami or Miami Beach?

A. Well, between Miami Beach, New York and either Asheville or Lake Placid."

No. 388, letter from Dade County Tax Assessor to Green, April 3, 1933, acknowledging letter of Green of March 31, 1933, enclosing tangible personal tax return on the same basis as the preceding year (7192-3), in which he said:

"I wish to acknowledge receipt of yours of March 31st, enclosing tangible personal return on the same basis as last year, which is satisfactory to the writer, and you will be assessed accordingly.

However, under our law, inasmuch as you are not a citizen of this State, you would not be subject to the intangible tax except on bank stocks, as bank stocks are assessible only at the location of the bank, and therefore I will assess against you the stock owned on the basis that we have accepted from the bank as a fair value of the stock. It is, therefore, unnecessary for you to file an intangible return unless you care to do so" (7193).

No. 389, certificate of Carl Holmer, Jr., Supervisor of Registration, Dade County, Florida, that he had made a careful search from the year 1926 to and including the year 1936 in the precinct of Dade County, in which Star Island is located, and had not found that Green ever registered as an elector in said precinct and County during said period (7194).

No. 390, certificate of the City Clerk of the City of Miami Beach, Florida, certifying that he had made a search of the records of the City from 1924 to 1936 and found that Green never registered as a voter in the City of Miami Beach, Dade County, Florida (7195).

No. 391, letter from Green to Felix Rackemann, Boston, March 20, 1923, in which he said (7199-7200):

"First, I want to offer you an apology. On account of being taken sick in New York, the doctor rushed me down

to Florida, and the excitement of the long trip is responsible for the delay in answering your letter of February 13th. We arrived here in Miami on the 10th and found the weather very warm. At no time has it been under seventy and in the middle of the day it is around eighty to eighty-two. There is a big difference from cold old New York. The very bad cold I had in New York has entirely disappeared. I have also improved in walking and think a great deal of this climate.

Coming back to the Murray Company business; I am returning herewith the draft of the trust agreement with the following notations:

The town of Terrell is spelled T-e-r-r-e-l-l and it is located in Kaufman County, Texas. Dallas is situated in Dallas County, Texas. I would suggest that you make two trusts, one adapted to my sister and one adapted to me, my sister's trust to be called the Greenwich Trust and mine the Terrell Trust. My sister's name should be spelled W-i-l-k-s, and her initials are H. Sylvia A. H. G."

No. 392, photostat copy of the Terrell Trust made April 9, 1923, at Terrell, in the County of Kaufman, State of Texas, between Green, of said Terrell, as Settler, and Walter P. Allen, of Terrell, and Hetty S. A. H. G. Wilks, sister of said Green, as Trustees, etc. (7202-11).

No. 393, photostat copy of an amendment to said Terrell Trust executed in April, 1933, by Green, of Terrell, Texas, and the aforesaid Trustees (7211).

No. 394, letter from Green to said Allen, December 17, 1923 (7214), in which he said:

"I expected to see you up here this summer, and I tried to get down in November, but my knee and wrist bothered me with that pain, and I am only able to navigate around the room. I am going to try to get away to Florida before long and see if that will help me again a little. I am glad to see that Murray Company is going to resume dividends the latter part of December." (7215).

No. 395, copy of resolution of Directors of the American National Bank of Terrell, Texas, December 30, 1927, thanking Green for the present of a clock and expressing their appreciation of his remaining on the Board of Directors during so many years (7217).

No. 396, letter to Green, Miami Beach, March 30, 1928, from A. D. McDonald, Southern Pacific Lines in Texas, regarding the delivery of the stocks and bonds of the Green Estate, Incorporated, in the Texas Midland Railroad, and stating that he had delivered the check to the representatives of the Estate for $2,250,000 and asking him to remain as President and Director (7223).

No. 397, Green's reply, April 4, 1928, in which he said (7226-7):

"I note the arrangements you have made for having me remain with the Texas Midland as President and Director, and also for becoming a Director of the Texas and New Orleans Railroad Company. I deeply appreciate the confidence shown by this action, and it is with pleasure that I join the Southern Pacific Family, to help out in any way I possibly can to straighten out any 'kinks' that may appear in the records, or to make my thirty-five years' experience in Texas beneficial to the Southern Pacific. However, as you are probably aware, my physical condition will not permit of me giving the road any active service. With this understanding, I desire to accept, and assure you of my appreciation for, the courtesies extended in your letter."

No. 398, letter from said McDonald to Green, May 10, 1928, advising him that at the annual meeting of the stockholders he was elected President and Director (7228).

No. 399, certificate of the United States Acting Comptroller of the Currency, August 4, 1936, of oaths taken by Green as Director of the Chase National Bank, New York City, for the years 1932 to 1936 (7230). In making the offer of said Exhibit, counsel for Texas stated:

"Mr. McCraw: We offer in evidence as a Texas exhibit the oaths of office of Colonel E. H. R. Green, as director of The Chase National Bank of the City of New York, New York, for the years 1932 to 1936, inclusive. These bear the certificate of the Treasury Department dated the 4th day of August, A. D. 1936, signed by William Prentiss, Jr., acting Comptroller of the Currency, with appropriate seal.

I particularly direct the Court's attention to the first one with the blanks filled in, being in the form of an affidavit made in the state of Florida, county of Dade, wherein it is specifically said:

I, the undersigned, director of The Chase National Bank of the City of New York, located at New York, New York, being a citizen of the United States, and resident of the state of Texas, do solemnly swear, and so forth.

That is acknowledged by E. H. R. Green before a notary public on the 20th day of January, 1932.

I also call attention to the oath of director filled out and subscribed before a notary public on the 12th of January, 1933, in which the oath, taken in the State of New York, county of New York, sets forth that:

I, the undersigned, director of The Chase National Bank of the City of New York, located at New York, New York, being a citizen of the United States, and resident of the state of Texas, and so on.

Also the oath taken on the 16th day of January, 1934, in the state of Florida, county of Dade, before a notary public there, stating:

I, the undersigned, director of The Chase National Bank of the City of New York, located at New York, New York, being a citizen of the United States and resident of the state of Texas, and then it goes on.

I also call attention to the affidavit made on the 15th day of January, 1935, by E. H. R. Green, in the state of Florida, county of Dade, in which the same statement appears under oath.

Also the affidavit made on the 17th day of January, 1936, by Edward H. R. Green, in the state of Florida, county of Dade, in which the same statement as to his being a citizen of the United States and a resident of the state of Texas is made" (7228-30).

No. 400, certificate of United States Acting Comptroller of the Currency, August 4, 1936, of Green's oaths of office as Director of The American National Bank of Terrell, Texas, from the years 1925 to 1936, inclusive (7245), and in making said offer, counsel said:

"Mr. McCraw: We offer in evidence the oaths of office as a director, taken by E. H. R. Green with respect to the American National Bank located in Terrell, Texas.

These certificates are accompanied by a certificate of William Prentiss, Jr., acting Comptroller of the Currency, executed on the 4th day of August, 1936, the oaths of office covering the period of E. H. R. Green as director of the American

National Bank of Terrell, Texas from the years 1925 to 1936, inclusive.

I call particular attention to these portions of the oaths of office:

One dated the 5th day of February, 1925, an affidavit made by E. H. R. Green in the state of Florida, county of Dade, before Charlotte E. French, a notary public, in which appears the statement:

I, the undersigned, director of the American National Bank located at Terrell, Texas, being a citizen of the United States, and resident of the state of Texas, do solemnly swear, and so forth.

Then the affidavit of E. H. R. Green subscribed and sworn to before J. P. Roach, Jr., on the 20th day of January, 1926, in the state of New York, county of New York, in which Colonel Green swears to the same statement with respect to his residence in the state of Texas.

Also the affidavit of Colonel Green executed on the 25th day of January, 1927, in the state of Florida, county of Dade, before Charlotte E. French, a notary public, in which a similar statement is made with respect to the Texas residence of Colonel Green.

Also the affidavit of Colonel Green made on the 20th day of January, 1928, in the state of Florida, Dade county, before Charlotte E. French, a notary public, in which the same statement is made as to the Texas residence of Colonel Green.

Also a similar affidavit made by Colonel Green on the 18th day of January, 1929, before Charlotte E. French, a notary public of the state of Florida at Large, in which the same statement is made with respect to Colonel Green's residence in Texas.

Also an affidavit executed before Charlotte E. French by E. H. R. Green on the 22nd day of January, 1930, made in the state of Florida, county of Dade, setting forth the same affirmation with respect to Colonel Green's Texas residence.

Also an affidavit executed on the 19th day of January, 1931, before Charlotte E. French, a notary public in Dade County, Florida, setting forth the same statement with respect to Colonel Green's residence in the state of Texas.

And as a part of this exhibit the affidavit made by E. H. R. Green on January 27, 1932, in Dade County, Florida, before F. Louis Smith, a notary public, setting forth the

same statement with respect to Colonel Green's Texas residence.

In the same exhibit, an affidavit of E. H. R. Green executed on the 27th day of January, 1933, in Florida, Dade County, before H. H. Culbertson, a notary public, setting forth that Colonel Green is a citizen of the United States and a resident of the state of Texas.

Also another affidavit executed on the 16th day of January, 1934, by Edward H. R. Green, in the state of Florida, county of Dade, before F. Louis Smith, a notary public, setting forth the same statement with respect to Colonel Green's Texas residence.

We also call attention to the affidavit of E. H. R. Green executed on the 15th day of January, 1935, before H. H. Culbertson, in the state of Florida, county of Dade, with respect to Colonel Green's residence in the state of Texas.

Also an affidavit of Colonel Green executed on the 22nd day of January, 1936, before E. E. Stockwell, a notary public in Dade County, Florida, setting forth that Colonel Green is a resident of the state of Texas" (7242-45).

No. 401, certificate of said United States Acting Comptroller of the Currency, August 4, 1936, of Green's oaths as Director of the Seaboard National Bank of the City of New York for the years 1925 to 1929, inclusive (7272), and in connection with said offer, counsel made the following statement (7270-1-2):

"Mr. McCraw: Texas offers in evidence the oaths of office of E. H. R. Green as a director of The Seaboard National Bank of the City of New York, New York, for the years 1925 to 1929, inclusive.

These copies of oaths of office, which are photostats of the originals, bearing the certificate of William Prentiss, Jr., Acting Comptroller of the Currency, under seal of the Comptroller of the Currency of the Treasury Department of the United States, in which Colonel Green designates himself in the various oaths of office as a resident of the state of Texas, and we call particular attention to the oath taken by Colonel Green in the state of Florida, County of Dade, before Charlotte E. French on the 5th of February, 1925, in which he makes that statement as to residence.

Also the affidavit made on the 20th of January before J. P. Roach, Jr., a notary public in New York County, New

York, in which he makes the same statement with respect to his being a resident of the state of Texas.

Also the affidavit of E. H. R. Green dated the 14th day of January, 1927, made before J. P. Roach, Jr., to the same effect with respect to Colonel Green's residence.

Then there is the affidavit executed by Colonel Green on the 11th day of February, 1928, in Florida, Dade County, before E. L. Jones, a notary public, in which is contained a similar statement as to the residence of Colonel Green; and

The affidavit of E. H. R. Green made before E. L. Jones, a notary public in Kaufman County, Texas, on the 14th day of January, 1929, in which Colonel Green sets forth that he is a resident of the state of Texas." (7270-1-2.)

F. Lowry Wall, testified that he had been President of the Miami Beach First National Bank since 1930 and had been connected with the Bank since 1922; that he first met Green in 1924 or 1925; he became a stockholder of the Bank in 1928; on several occasions Green told him his legal residence was in Terrell, Texas; in all his conversations with Green, he designated Round Hills as his Summer home (7284-8).

On cross-examination by counsel for Florida, he testified that Green bought 100 shares of stock in his Bank in 1928 and was living at Star Island at the time; he also became interested about the same time in the First National Bank of Miami, buying about the same number of shares (7290-2); witness never visited him at his home but has attended several parties there given by Mrs. Green and saw the first floor of the Star Island house (7292-3); it was beautifully furnished, like the other larger homes, and the grounds were well kept; they were considered very fine in every way; Green would come down about Christmas and remain until about May 1st or 10th (7294); he was a good contributor to the different civic organizations and community projects in Miami; he received letters of solicitation from different organizations and asked witness if they were worthy (7295-6); Green said Terrell, Texas, was his domicile and made no differentiation between legal residence and domicile; he did not tell him he was living in Texas but said he spent his time in Massachusetts, New York and Florida (7298-7300).

On cross-examination by counsel for Massachusetts, he testified that Green was a member of the Surf and Bath Clubs of Miami Beach, social organizations for the benefit of Winter residents, which were open from about December 1st to May 1st and witness has seen Mrs. Green but never Colonel Green there; Green told him what he was doing in Massachusetts, etc., and that he didn't go there until after July 1st because of the tax rule "but he always laughed about it" (7304); on the occasion when witness attended parties at Star Island he did not see Green (7305); he communicated with him at South Dartmouth and sent him specimens of new National currency—as much as $20,000 to $30,000 a month or about $150,000 all together; Green told him about his projects at Round Hills in numerous conversations but he does not remember the details (7306-8).

On cross-examination by counsel for New York, witness identified N. Y. Ex. No. 223, signature card of Green in the Miami Beach First National Bank, April 11, 1927, containing the address, "111 Broadway, N. Y." and same was given in evidence (7309); he stated that Green probably told him on several occasions about not going to Massachusetts until the 1st of July on account of taxes, it was a joke with him (7310-11); Green told him his mother gave him $1,000,000 when he was twenty-one and thirty days to invest it and called him back home to tell him whether he was right or not (7311); Green said he invested it in a few shares of every Bank in Texas (7312).

Dr. Charles Frederick Roche, of Miami Beach, testified that he first met Green in 1934 in consultation with one of his attending physicians; he was an invalid and found him suffering from heart trouble and pernicious anemia; at times he visited him daily and then two or three times a week during a period of two years (7315-18); Green told him he had lived the greater part of his life in Texas and his business interests largely were there; he said his residence was in Terrell, Texas (7319), and discussed his friends there more than once; he was in Miami Beach in the Winter season, from November until April or May; in the Summer of 1934, he went to Massachusetts to his Summer home; in 1935, he went to Marlin, Texas; in 1936, to New York State; witness always considered Dr. Buie, of Marlin, as the chief medical advisor and he

and witness consulted about the Colonel's movements when it came to the time for him to leave and were largely guided by Dr. Buie's advice and wishes in the matter (7320); in 1936, Green said, in substance, primarily he would have preferred to have gone to Texas but he realized from his visit there the previous year that he could not tolerate it very well so that his next procedure was to go to some place where the altitude was not too high but where it was sufficiently high that he could live in reasonable comfort perhaps without oxygen (7324); in 1935, he expressed a similar preference and did go to Texas; he was hesitant about going to Lake Placid; he said that he was or had been, a director of the Chase Bank in New York and there was some matter that had arisen that might have necessitated his appearing before some hearing in connection with his directorship of this bank; of course, we assured him that there would be no difficulty about that; the other matter was that there was a limitation of time that he could elect to remain in the State of New York due to the fact that he told me that he wanted to keep his visit there definitely under six months, I believe, if I remember correctly (7325-26). The witness went to Lake Placid with Green in 1936 and remained several days (7327).

On cross-examination by counsel for New York, he testified that he was first called into consultation with Dr. Hotchkiss, of Miami; he cannot say that Green specifically said he had a house in Texas (7331); in 1935, Dr. Buie had come down and said Marlin would be the proper place for him and he went to Dr. Buie's sanitarium at Marlin for his health (7332); he was seriously ill when he left Miami in 1936 (7333); he was growing progressively worse and had a day and night nurse and had been under an oxygen tent before leaving for New York (7334).

On cross-examination by counsel for Massachusetts, he testified that Green's condition at the times he was called to see him was acute, he had had a hemorrhage, probably from the pernicious anemia, due to lack of certain blood constituents (7350); there was no history at that time connected with the excessive use of bromo-seltzer; through correspondence he knows Dr. Buie recommended that Green go to Texas in 1934, but he left Miami for South Dartmouth (7351); in 1935, his condition was progressively worse and as the result of Dr. Buie's advice, he went to Texas in 1935; in 1936, he was still worse and witness advised him

to go to the high altitude of Lake Placid rather than th sea altitude (7353). On cross-examination by counsel fo Florida, witness testified that from February, 1934, unti Green went North in the Spring, he saw him approximatel 50 times, making the usual practitioner's calls (7355); whe he last saw him in the Spring of 1934, he had gotten up fron bed and was able to move around; that he cannot recal whether he said anything about going to Texas that yea but it always seemed to witness that was the first place h always thought about (7357); that he never mentioned "home" by that word and never told him he had sold i 1911 the only home he had in Texas and shipped all his goods to New York, nor that he had sold practically al of his property there in 1911 and 1912 and had practically nothing left, or that in 1927 he sold the last vestige of his Railroad there (7358); that Green was then residing in his Star Island home at Miami Beach, a very palatial home as it seemed to witness, one of the finest homes in Miami Beach, with all the home comforts (7359); every time witness saw him until he died he was residing there; when he saw him again in December, 1935, his general condition was gradually sinking; witness continued to act as his physician until he left about April 30th and saw him frequently, never less than one hour and sometimes two hours; when Green was able to talk about his past life, he would reminisce about his early history in Texas (7362); in 1935, he went to Marlin primarily for treatment for his health and blood conditions and not for the baths (7363); he then went to Massachusetts and in 1936 he left his home in Florida for Lake Placid upon the combined advice of Dr. Buie and witness, where he passed away (7364).

CHARLOTTE E. FRENCH, of Miami Beach, testified that she had been employed by the Miami Ocean View Company since 1922 as secretary to the President and met Green in 1924, when he purchased three lots on Star Island from the Company; the first lot being the one with the old Yacht Club House on it (7366-8). Witness identified Tex. Ex. No. 402, a deed to the property purchased April 24, 1924, and Tex. Exs. Nos. 403 and 404, two other deeds dated February 12, 1925, covering property on Star Island purchased by Green (7370-7392).

Witness testified she was a Notary Public at this time and had been since 1923 and took a good many acknowledgments from Green; that most of the papers were filled out; that when the Company sold him the property, he said he was from Kaufman County, Texas, which was incorporated in the deed (7402-4); that Green talked about his Railroad down there; that she knew he had an office at 111 Broadway, New York City, and his papers came from there and she corresponded with it; he told her about a Summer home in Massachusetts—a big estate and an airport where he used to go and spend his Summers (7405-6); also told her about living at the Waldorf-Astoria and Sherry-Netherland, New York City, and going to Lake Placid in the Spring (7407).

On cross-examination by counsel for New York, witness testified that Green, in discussing politics, said he didn't vote in Florida; he could vote in Texas but did not say when he had last voted in Texas (7409-10).

On cross-examination by counsel for Massachusetts, witness testified that Green said he had a big place in Massachusetts, an airport, experimental station and a radio station (7412).

On cross-examination by counsel for Florida, witness testified that when she first knew Green he was living in the house boat "Colonel" anchored off Star Island, a boat with comfortable living quarters; in conversations with Green in 1928 and 1930, he told her he had voted in Texas but never said anything to her about going there to vote (7417); that the Star Island home was where Green said he ate and slept and where his wife stayed and gave parties when witness knew them (7420); that he showed an interest in the welfare of the hospitals and other civic organizations in Miami; that Star Island is an artificial island in a highly restricted residential area; that she never had any correspondence with Green in Texas and he never told her he was going there to stay in any home (7422); her talks with him related to the past (7423).

On further cross-examination by counsel for Massachusetts, witness identified Mass. Ex. No. 440, a plat of Star Island, and the same was given in evidence (7426); she further stated that her talks with Green were principally in 1928 and 1930; that from 1934 on she never came in close contact with him; that the last couple of years he was not well and did not go out a great deal (7427).

New York Evidence

At the hearing held at the Hotel Roosevelt, New Yor City, beginning January 12, 1938, counsel for the State o New York gave evidence by the following witnesses tend ing to prove:

Boothe Colwell Davis, Jr., of Plainfield, New Jersey testified that he was the Secretary of the Chamber of Com merce of the State of New York; that the printed reports for the years 1919-20 showed that Green was elected to resi dent membership December 4, 1919, and continued on the rolls of membership until his death in 1936 as a resident member (2901-3); that the by-laws then in effect provided for two classes of members—resident, those residing or do ing business in the City of New York, and all others were classed as non-resident (2903). The witness identified and counsel for New York gave in evidence N. Y. Ex. No. 11, bill rendered Green at 111 Broadway, New York City, for resident dues for the year 1936, stamped "Paid January 7, 1936" (2906-7). On cross-examination by counsel for Texas, witness testified that 111 Broadway was an office building (2909), and on cross-examination by counsel for Florida, he testified that to the best of his knowledge in the ten years he had been employed there he had never seen Green in or about the Chamber of Commerce headquarters (2909-11).

Ernestina Holcinger, a resident of New York City, tes tified that she knew Green and started to work for him in 1911; that Miss Harlow, afterwards Mrs. Green, engaged her July 1, 1911 (2913-14); she went to work at 5 West Ninetieth Street and at that time Colonel Green and Miss Harlow were living there keeping house; witness continued to work there until about 1918, after the holidays, when they moved to the Waldorf-Astoria (2915); that the Ninetieth Street house was an old-fashioned brown stone, four-story residence containing three bedrooms, a sitting room, foyer and hall, dining room and billiard room; the sitting room, foyer and dining room were on the first floor; on the sec ond floor, Colonel Green's bedroom, Miss Harlow's or Mrs. Green's bedroom and on the third floor a billiard room and guest room; on the fourth floor the servants' quarters—

three bedrooms and one store room (2917); in the basement was the kitchen, dining room for the help and laundry; during the period Green lived at 5 West Ninetieth Street he had two Japanese servants, one a cook and the other a butler and valet (2918); the furniture consisted of a dining room set, with the exception of a table (they used a card table), a few chairs in the parlor, a little couch with two settees, a piano and a couple of lamps; the house was comfortably furnished (2918); during the period witness knew Green he worked on his stamps and coins at night, sometimes played cards and at times went to shows (2918); he became interested in stamps about two years after witness went to living there (2919); that before they moved to the Waldorf-Astoria, witness saw Green every day for the first two weeks and afterwards two or three times a year when she came down to help Mrs. Green (2919); witness and her husband continued to live at 5 West Ninetieth Street as caretakers until 1928 and left because the house was demolished; at the Waldorf-Astoria, Green's apartment consisted of eight rooms, four bedrooms and sitting room, a room where he did some of his business and another room where a girl worked on his stamps—he had his stamp collection there (2920); that witness visited Round Hills twice—for one month in 1924 and three months in 1922 (2921) (but see pp. 2950, 2967, 2975); she believes the furniture at the Waldorf-Astoria belonged to the Hotel, with the exception of the piano which belonged to Green; that the furniture was very nice (2922); that Green was at the 5 West Ninetieth Street house every day between 1911 and 1918, except twice a year when he went to Dallas, Texas, once to vote and the second a business trip (2923); that Green's mother came to the Ninetieth Street house and also his secretary, Walter Marshall, came occasionally; that Green was married on July 10, 1917, to Miss Harlow; lived at the 5 West Ninetieth Street house until the time of the marriage; they left for Chicago to be married and when they returned, they went to the yacht "United States"; witness and her husband were on the boat on this trip; they cruised about Long Island Sound for five or six weeks (2924-25); Green had put a new hot air furnace in 5 West Ninetieth Street; this house was one house from the corner of Central Park West on the north side of Ninetieth Street: there were a lot of boarding

houses there at that time—apartment house on the corner and a garage across the street (2927); they had two Pierce-Arrow cars, one for the Colonel and one for Mrs. Green (2927); after the yachting trip, they came back to the Ninetieth Street house for a little while and then moved to the Waldorf-Astoria, taking their personal belongings, stamp collection, etc. (2929); some of the collection was left until 1928; the stamps were mounted in large books with green covers; he had them all over the room—some in the two safes, and some in the desks; he was very much interested in them (2929); the 5 West Ninetieth Street house was supplied with linen and silver (2929); while at this house, Green usually had his breakfast upstairs and after dressing he went to business about nine o'clock every morning; his office was in the Trinity Building, 111 Broadway; he returned about five or a little after, would have his dinner at the West Ninetieth Street house and spend the evening there working on his stamps, playing cards or sometimes going to shows (2931); he did not like the opera and witness went with Mrs. Green (2931); he liked comedy and had season tickets for the Palace Theater, where they had a first class vaudeville (2932). On cross-examination by counsel for Texas, the witness testified that the West Ninetieth Street place was plainly furnished; Green was never a well man; he took lots of bromo-seltzer (2934); that Green was very friendly and kind to those who worked for him; that no use was made of the West Ninetieth Street house after they moved to the hotel; that the furniture stayed there and witness and her husband remained as caretakers until it was torn down in 1929 (2934-35); that between 1917 when they moved there and the time when the Waldorf was torn down the Greens travelled a great deal; that witness does not know where they went from the Waldorf but from the Ninetieth Street house he made one trip to Texas (2936); the trips were not discussed with witness and she knew nothing about them (2937); after 1917, Green never stayed in the West Ninetieth Street house; some of the furniture was moved out the first year, the beds for the help were left (2937); never heard Green discuss where his residence was; after Green went to the hotel his condition grew worse; from 1911 on he was in a continual decline from what he said and witness observed (2938).

On cross-examination by counsel for Florida, witness testified she was first employed by Miss Harlow but worked for both of them at West Ninetieth Street (2940); that this was a residential part of New York City, although there were apartments and boarding houses and public garages around there (2941); that when she went there she found the two Japanese servants, Colonel Green and Miss Harlow; she was employed as chambermaid and took care of Mrs. Green and the second, third and fourth floors (2942); from 1911 until 1918 Green went away twice a year, in the Fall around election and in the Spring; in November he stayed away a few days and in the Spring a couple of weeks (2944); in the Fall he took Miss Harlow with him (2945); his mother visited 5 West Ninetieth Street when he was sick, and when she had the office at No. 7 next door for a short time during her illness she came over every day (2946); witness never saw Mrs. Wilks, Green's sister, there (2947); they went to Round Hills, Massachusetts, in the Summer time—that was their Summer residence—they went there about the 4th of July because Green wanted to see the fireworks and returned to the Waldorf-Astoria in October (2949-50); that before their marriage, they did not entertain at 5 West Ninetieth Street and did not live there long after their marriage (2951); they would spend the Summer at Round Hills and after witness left they had a Winter place in Florida (2951); the time witness spent three months at Round Hills was in the Summer time (2952); they had a few guests there—Mr. and Mrs. McDonough, friends of Green from Dallas, Texas, and some relatives of Mrs. Green (2953); Green was active while at Round Hills and was not sick; he drove around the place in a little car, made a lot of improvements, had an air field and radio station (2956); that the neighbors complained of the radio being too noisy and he had to have the horns cut down; that a lot of young fellows were there studying radio; witness does not know where they slept (2957-8).

On cross-examination by counsel for Massachusetts, witness testified that Mrs. Green bought a couple of chairs for the sitting room after witness got there but the other furniture was installed; they had lived one year in New York before witness was employed by them (2960-1); the furniture was moved from 5 West Ninetieth Street on three occa-

sions between 1918 and 1928—some of it after the building of the house at Round Hills (2963); the old paintings were first sent up about 1921 by Mr. Van der Putten, the decorator for the Round Hills house (2964-6); afterwards the beds and carpets were taken up and in the Summer of 1928, just before the house was demolished, the rest of the things were taken; trucks came from New Bedford to get them (2966-7); in 1922, when witness was at Round Hills, she saw in the main hall some of the paintings that had gone up (2968); does not remember seeing any picture of Mrs. Hetty Green at Round Hills but recalls a small picture of her that Mrs. Green had in her bedroom which she took with her to the Waldorf; all of the contents of the West Ninetieth Street house witness later saw at South Dartmouth; the books went the last time they moved furniture but witness does not know where they went but they were the things that went in the New Bedford trucks (2969); in 1921, part of the dining room set was taken; the dresser was left a long time because it had the silverware in it; the china closet and some of the parlor and sitting room furniture was taken—the choicer furniture went up (2969); that after the marriage and cruise on the yacht around Long Island Sound, witness left them and they went to Massachusetts, later coming back to New York and went on a cruise from there, returning just before Christmas (2971); that from the time of the marriage in July, with the exception of a couple of weeks at the house, they were in the yacht; they spent Christmas in the West Ninetieth Street house and after New Year's Day 1918, moved from there for good (2972); for a few weeks after they left, witness helped them at the Waldorf and also when they came from Round Hills and before they went—twice or three times a year, usually around the holidays and in June (2973-4); that by travelling around witness meant they were away from New York; that the Colonel travelled a lot; it was hard for him to live any length of time in a place since he had so many homes—he would stay in each place two or three months (2974-5); that witness was never with them outside of New York and Massachusetts; she was at South Dartmouth about July, August and September, 1922, and one month in 1924, left the Greens there and returned to 5 West Ninetieth Street (2975-6); Green had an organ at 5 West Ninetieth Street which stayed until 1928; she does not know what became of it (2976); Green took bromo-seltzer every day when he came in from business; he took it in a large glass and the supply disappeared rapidly (2977).

On cross-examination by counsel for Mrs. Wilks, witness testified that after moving to the Waldorf in 1918, Colonel Green and Mrs. Green never lived at the West Ninetieth Street house; she has not been employed by them since 1928 and saw Green the last time at the Sherry-Netherland about four years ago (2978); it had been her practice to see them there about twice a year after 1928 (2979).

On cross-examination by counsel for Florida, witness testified that she last saw Green about 1932 or 1933, about the end of June, just before they went to Round Hills (2980).

On redirect examination by counsel for New York, witness testified she knew the trucks were New Bedford trucks by the name on them; she did not see any of the furniture from the West Ninetieth Street house at the Round Hills house, although she was in all of the rooms there (2981); that there were a few other residences near 5 West Ninetieth Street but most were furnished rooming or boarding houses at that time (2982); that the Greens did not have a routine date for coming from Round Hills; they came back late and when he was not feeling so well they went right on South; sometimes they came back about December, sometimes in October (2982-3); that Mrs. Hetty Green died at 7 West Ninetieth Street about July, 1916 (2984); that witness is certain the paintings from the West Ninetieth Street were at Round Hills—quite a number of them—in the hall; the pictures at the Waldorf-Astoria belonged to the Hotel (2985); does not remember seeing a picture of Mrs. Hetty Green at the Waldorf-Astoria but Mrs. Green took it along when they moved there (2986); at the Waldorf they had an extension 'phone and there was a telephone at West Ninetieth Street and the Greens received mail there (2987).

Leon R. Morford, a resident of New Jersey, testified that he was connected with the Commodore-Biltmore Garage, 323 East Forty-Fourth Street, New York City, and was Vice President and General Manager from May, 1920 to November, 1927 (2990); during this period Green kept automobiles there on live or full service storage, which consisted of keeping the cars clean and ready for use day or night on the year-round basis (2991); as witness recalls, Green had one and the other belonged to his sister, Mrs. Wilks; the first car was a Pierce-Arrow and the second or third year a Lincoln; Mrs. Wilks first had a Cadillac and then a Lincoln (2991-2);

all the plates were New York plates at all times; each of them had a chauffeur (2992).

On cross-examination by counsel for Texas, the witness testified he knew Green casually and once or twice had a conversation with him about his radio station in New Bedford (2993); he was living at the Waldorf-Astoria when witness knew him.

On cross-examination by counsel for Florida, witness testified the cars were stored there continuously throughout the year and not moved or shipped anywhere; they were used frequently; they seemed to use the car more in the Spring and Fall; in the Summer and a couple of months in the Winter they were not used frequently (2997); that his conversation with Green was about 1924 or '5 when the radio was coming in; he told witness about a station or laboratory that he had down East in New Bedford—his Summer home there (2999).

On cross-examination by counsel for Massachusetts, the witness testified that after he ceased connection with the garage in 1927 he saw the cars and the chauffeurs there for two or three years afterwards (3002).

On redirect examination by counsel for New York, witness testified that the first car was a Pierce-Arrow with an enclosed drive or vestibule for the chauffeur, carrying five passengers in the rear and one with the driver (3003); the other cars were limousines with the driver not enclosed (3004); during all the years Green's cars were kept in this garage they bore New York licenses (3005).

August Holcinger, a resident of New York, testified that he was the husband of Ernestina Holcinger and began to work for Green August 1, 1917, as an able seaman on the yacht "United States" and was employed by him approximately two months and lived at 5 West Ninetieth Street when his wife was caretaker, receiving free rent, light and heat but no compensation (3007-8); from 1916, when witness became acquainted with his wife, up to the time they left the West Ninetieth Street house, Green had a dark blue Pierce-Arrow car but witness is not positive about the license plates (3009).

On cross-examination by counsel for Texas, he testified that the yacht "United States" had nothing but "United States" written on the stern; he did not know the home port

of the boat; in the two months he was with Green they sailed around New York waters, up the Sound and Hudson River but did not go outside of New York State or Long Island Sound (3009-10).

On cross-examination by counsel for Massachusetts, he testified that the "United States" did not leave New York waters while he was on it except to visit Mrs. Wilks in Greenwich, Conn. (3014).

John O. Green, of Long Island, New York, testified that he was a salesman for Tiffany and Company, jewelers, New York City, and had been for twenty-eight years (3016); he first met Green ten or twelve years ago, between 1921 and 1925, to sell him jewelry (3017); that he went to his Waldorf-Astoria apartment by appointment, was received in the combined apartment and office room, containing a desk and a few chairs and bed; that after that he saw him a number of times, usually in the months of June and December when he made trips to New York (3019); the last time was about two or three years ago when he stopped coming to New York—possibly 1934; after he moved from the Waldorf, witness saw him at the Sherry-Netherland Hotel in his big room where he had his desk, filing cabinets, a safe and a few chairs and a table (3020); saw his stamp collection a number of times at the Waldorf but is not sure he saw it at the Sherry-Netherland because at that time he was not as keen about it as he was when at the Waldorf (3021); the jewelry he purchased was what people would give as presents mostly; Green told him he spent his Summers at Round Hills (3021).

On cross-examination by counsel for Texas, the witness said he tried to visit Green at Round Hills about 1932 but Green was sick at the time; when he first met Green he was affable and not suffering any pain and when he moved to the Sherry-Netherland he was not as well as when at the Waldorf (3023); saw him on several occasions in a wheel chair in New York, usually saw him twice a year—a half a dozen times each time he came to New York; in their conversations, Green would tell him what had happened since they last met and would show him the new contrivances he had gathered; he liked anything that went

off with a snap; if he could find something to fool his friends he took the keenest delight in it; he sent gifts he purchased all over the country and to a variety of individuals (3024-5); witness knew that he made New York a stopping place going down to Florida and coming back to Massachusetts (3026).

On cross-examination by counsel for Florida, he testified that after trying to see him in 1932, witness saw Green at the Sherry-Netherland in either December of that year or June of 1933 but cannot state positively (3027); in talking with him of what happened since their last meeting, he would speak of Florida but in recent years he did not speak of Texas (3027-8); he spoke of his house in Florida as a nice place and with some degree of affection—he often spoke of going down to Star Island and what he did down there—about his boats, etc. (3028).

On redirect examination by counsel for New York, he testified that Green's account with Tiffany varied from several thousand dollars a visit to as much as $25,000; sometimes he did not buy anything; he was a liberal spender for jewelry (3030).

George E. Ashby, a resident of Brooklyn, New York, testified he was Treasurer of the New York Microscopical Society and had been for five years (3031); that Green became a life member May 6, 1921; the only address the Society had was 111 Broadway, to which all notices for him were sent (3033).

N. Y. Ex. No. 12, Green's application for life membership in the Society dated April 7, 1921, was given in evidence (3035).

On cross-examination by counsel for Texas, witness testified he had never met Green and in response to question by counsel for Florida, said he never saw him about the headquarters of the Society.

Witness further testified that he had attended nearly all meetings of the Society since 1886 and never saw Green there (3037).

Wilbur K. Potter, a resident of New Jersey, testified that he became acquainted with Green in December, 1913,

in connection with the preparation of income tax returns for Mrs. Hetty Green; previously he had been auditor for the Delaware, Lackawanna & Western Railroad and was familiar with accountancy; he first met Green at the Seaboard National Bank in the officers' room where he was occupying a chair, known as Green's chair, and shortly afterwards he met him and his mother at 7 West Ninetieth Street (3041-4); this was a four-story brown stone basement building of the residential type; the first floor front room had been fitted out for an office where the business of Green and his mother was transacted; their business was looking after their own securities and private funds (3044); it was finally arranged that witness was to come the first or second of January, 1914; Mrs. Hetty Green employed him and the Westminster Company paid him; his duties were to keep the accounts of their principal and income; he remained there until August, 1916; Colonel Green stayed next door at 5 West Ninetieth Street; Mrs. Hetty Green lived at 7 West Ninetieth Street for a period prior to her death; after her death, Green moved the office to 111 Broadway, in the Trinity Building, and they have occupied the same office since they moved there in 1916 (3045-7); witness gradually assumed more of the work, conducted the correspondence and had charge of the office; this was also the office of the Windham Realization Company and the Westminster Company, as well as the personal office and business address of Green (3048), and continued to be so during the time they have been at 111 Broadway; he believes Green lived at 5 West Ninetieth Street until the first part of 1918 and lived in the apartment at the Waldorf until it was torn down about 1929; witness visited him there but only had occasion to go into Green's bedroom and the adjoining room occupied by his secretary, where he had some files; in his bedroom he had a large desk (3049-50); when Green didn't come down town witness would probably see him twice a week there to discuss correspondence and get his ideas about investments; from there he went to the Sherry-Netherland; at the Waldorf, he had a private unlisted telephone and had the same in his apartment at the Sherry-Netherland (3051-2); witness would see him at the Sherry-Netherland about the same number of times as at the Waldorf when he was in New York (3052); the apartment at the Sherry-Netherland consisted of a private foyer, his bedroom op-

posite the main entrance, a large living room, another room for files where his secretary and the girl in charge of his stamps were located (3053); beyond these was a pantry, pantry accommodations and a kitchenette; to the left of the entrance was Mrs. Green's quarters; the apartment occupied the entire twenty-fourth floor and the outlook was north and northwest directly over Central Park; outside of the big room was a large terrace (3053); Miss Harlow lived with Green at 5 West Ninetieth Street, and at the Waldorf were Mrs. Green and Mrs. Green's maid (who became Green's attendant), Gerda Larsen, and at the Sherry-Netherland, Mrs. Green and the Colonel's two nurses and Mrs. Green's maid; from the time witness first knew him until he moved to the Waldorf-Astoria Green spent the greater part of each year in New York (3055); he usually came to 7 West Ninetieth Street each morning, would then go down town, usually to the Seaboard Bank, returning in the middle of the afternoon, sometimes stopping at 7 West Ninetieth Street; from 1916 to 1918, he would usually go to 111 Broadway in the morning, then to the Seaboard Bank, of which he was one of the Directors, where he occasionally saw him in the officers' room, usually seated in the same chair (3056); he was elected a Director shortly after he came from Texas and continued to be one through successive mergers until the date of his death; the Seaboard was merged with the Equitable Trust and the Equitable Trust was merged with the Chase Bank; Green was a Director at one time in both institutions and was a Director in the Chase Bank from the time of the merger about 1931 or '32 until his death (3057); he was also a Director in the Columbia Trust, a separate institution from the Seaboard; a Director in the New York Produce Exchange and Storage Company until his death; the only other Companies of which he was a Director were his own Companies—the Westminster Company, the Windham Realization Company and the Green Estate, Incorporated, of all of which he was President (3058-9); he was active in their management and the final say in all of their activities; the Green Estate, Incorporated was the outcome of the Estate of Hetty H. R. Green; this Estate was to remain in existence ten years after her death and then a corporation was formed for that purpose; under the terms of her Will, Green acquired all of the estate of his

grandfather, Edward Mott Robinson, her father, with the exception of a small piece of real estate at Englewood, New Jersey, which was taken by Mrs. Wilks, Green's sister (3059-60); a trust was also created for Mrs. Wilks' benefit by the Will which was supposed to approximate in value $4,400,000, what Green got from his grandfather (3060); at the expiration of ten years, this trust property was to be distributed; Green and Mrs. Wilks were Trustees but she renounced and he became sole Trustee; the residue was to go to the survivor; under the Will of Hetty Green, her residuary estate went to Mrs. Wilks and Colonel Green as Trustees; Mrs. Wilks renounced and Colonel Green became Trustee of that trust also; it was to continue for ten years, income to be distributed quarterly to Colonel Green and Mrs. Wilks in equal shares; the Green Estate, Incorporated, sprang from these residuary estates, at the termination of the trust expiring ten years from the date of Hetty Green's death (3062); the stockholders were Colonel Green and Mrs. Wilks, holding 50% each; this Corporation has been continuously in existence since its formation in 1927 (3063); Colonel Green had an independent fortune of about $500,000, which increased until it was between $35,000,000 and $40,000,000 at the time of his death (3063-4); his banking was principally done in his own name at the Seaboard and the institutions into which it was merged; he also had bank accounts with the Colonial Trust Company at Amsterdam Avenue and Ninety-second Street, a small account at Dallas, Texas, and another at Miami of approximately $42,000, which was used at the time he was building the house and furnishing it; he also had an account with the Bank of Bay of Biscayne, which failed (3064-5); he had no bank account at Terrell, Texas, while witness was with him; the bank account at the New Bedford National Bank was established at the time he started to build at Round Hills, in order to pay contractors' bills and as an accommodation for his employees (3066-7); his balance there was about $25,000 when he died; his New York balances ran from an overdraft up to $1,500,000, taking them as a group (3067); during the time witness was with him, aside from his collections, Green had no other business than the investment of his fortune (3067); in making investments Green would examine circulars from brokers, give orders for the pur-

chase of certain securities and instruct them to deliver them to the Seaboard Bank against payment and the office would reimburse the Bank; when he first came into his fortune from his mother he bought a variety of stocks and as his income taxes became higher, he shifted to Municipals principally—State non-taxable, Federal, City, Village, Town and School District Bonds; between 1916 and 1918, he invested in the Call Money Market in multiples of $100,000 to a half a million (3068-9).

Witness further testified that the Westminster Company was dissolved about 1928; it was an Investment Company and the Estate of Hetty Green included shares in that Company; she owned the majority of the stock and Colonel Green the remainder (3072-4); the Windham Realization Company was used for the purpose of furthering the business of the Westminster Company; Mrs. Hetty Green had a number of mortgages and if any of them required foreclosure, it was assigned by the Westminster Company to the Windham Company for such purpose and any real estate acquired as a result of the foreclosure would be held by the Windham Company; this Company was used for the liquidation of any mortgages whether owned by Hetty Green or Colonel Green or the Westminster Company; the assets of the Windham Company were transferred to the Green Estate, Incorporated (3074-5-6); Green's investments in stocks were of a general nature and his investments in bonds of corporations were the exception and not the rule; his call loans were not made directly by him but by participation in Bank loans; he did not invest in real estate to any extent (3076); he made very substantial investments in stamps, coins and jewelry; these were his main investments; others were incidental and occasional (3077); witness believes that it was the custom of stock and bond salesmen to call upon Green at the Bank; his current income from sales of securities or other properties were kept in these New York Banks mentioned by the witness—principally the Seaboard and during the later years of his life in the Chase (3078-9); when not in New York, his investments would be made by correspondence; the brokers would make their offers and if he approved they would be ordered through the broker to be delivered to the Bank against payment; witness made recommendations for investments which required Green's approval in every instance; if he

was not interested, they would not hear from him and the investment would not be made (3079); witness had charge of all the paid vouchers; when Green was away he made out checks and vouchers; witness had no independent bank account on which he could draw; he was an officer of all of the Corporations owned by Green but had no authority to draw upon their funds—everything was done over Green's signature; no one was authorized to sign for him (3080); at the office, 111 Broadway, all of his accounts of disbursements and investments were handled, excluding stamps, coins and jewelry which did not come under the heading of investments; if Green drew a check while in Florida or elsewhere it would eventually come back to 111 Broadway in order to keep his bank balances right; they kept a record of every item and every check and had different ledger accounts for different activities—such as capital accounts for Round Hills, for Star Island, and a maintenance account for both places; they had no ledger account for the jewelry, stamps and coins, this was charged to him personally (3082-3).

Witness further testified that at the Waldorf-Astoria Green made annual payment for his apartment the first year and afterwards a daily charge based upon the annual payment; the rent was raised several times; in 1918 it was $12,110.50; 1919, $11,491.20; 1920, $13,003.20; 1921, $16,240.32; 1922, $15,520.08; 1923, $17,194.76; 1924, $21,294.00; 1925, $21,422.00; 1926, $20,039.00; 1927, $19,838.00; 1928, the same as 1927, and 1929, $6,758 (3083-4); that Green and his family took their meals at the Waldorf-Astoria and they were all charged on a weekly bill, which usually was sent to 111 Broadway for payment (3085).

N. Y. Ex. No. 13, a lease of the Green apartment in the Sherry-Netherland covering the terms from May 1, 1929 to April 30, 1931, at an annual rental of $27,000, payable monthly, was given in evidence (3089-93). This lease was for a furnished apartment on the twenty-fourth floor of the Building, at the northeast corner of Fifty-ninth Street and Fifth Avenue, to be used and occupied strictly as a non-housekeeping hotel dwelling apartment by the tenant and his family. Thereupon the witness further testified that Green made the following payments of rental at the Sherry-Netherland—May 1, 1929 to April 30, 1930, $27,000; the same amount for the next two years; May 1, 1932 to

December 31, 1932, $18,000; for the years 1933, 1934 and 1935, it was $20,250 each year; for the year 1936 to November 30, 1936, $18,562.50 (3094).

He further testified that while at 7 West Ninetieth Street Green would come in, look over the mail, stay one-half or three-quarters of an hour and leave, sometimes returning during the day; he had a stenographer and answered correspondence; at his office, 111 Broadway, his activities were very similar; he would consult witness about his investments, etc.; the last time Green was in New York was June, 1933, and afterwards was not there to stay until April or May, 1936, when he went to Lake Placid (3094-5); he did not return due to a suit against the Directors of the Chase National Bank in which he did not wish to be served with process (3096); that the property at Round Hills, Massachusetts, which belonged to Mrs. Hetty Green at the time of her death, was subsequently owned by Green and his sister, Mrs. Wilks, and witness thinks the Round Hills property was constructed on the original land (3096-7); immediately after Hetty Green's death, the Colonel's fortune, in round figures, was nearly $6,000,000 (3097).

Witness further testified that Green was interested in theaters and during the period he was with him he made trips to Texas, usually in May and in October or November of almost every year until 1921; after that they were very infrequent (3098); the trip in May was to attend the annual meeting of the Railroad; he would return at the end of two weeks usually; in the Fall he said he was going down to vote; the last time he said he was going to vote was in October, 1921; he also made three or four trips to Marlin, Texas, for his health in years subsequent to 1921; his trips to Massachusetts commenced about 1918 or 1919 and it was his custom thereafter to spend the Summer at Round Hills up to the time of his death (3099-3102); that in 1914, when witness first met Green's mother, he thought her health was very good for a person of her age—79 or 80; in the month of April or May, 1916, she had a stroke; prior to that her condition was fairly satisfactory; up to the time of the stroke she attended the office regularly to look after her business affairs; prior to her death, it was the practice of Green to recommend investments and if his mother approved he went ahead; witness made no investments during Mrs. Hetty Green's lifetime—it was always done by the

Colonel (3102-3); the first income tax return prepared for Colonel Green was 1916 (3103); the 111 Broadway office comprised Rooms 1104 to 1107, inclusive; at 7 West Ninetieth Street the office force consisted of a stenographer and bookkeeper; after Mrs. Green's death, they employed another bookkeeper and another stenographer; at 111 Broadway, the office force consisted of witness, a bookkeeper and two stenographers; Mr. Marshall came into the office at that time; this was the office force up to the time of Green's death (3105); that between the time witness went with him and his removal to the Waldorf-Astoria, he thinks Green had a Pierce-Arrow and a Benz car garaged with the Automobile Club of America on Fifty-ninth Street, and from 1918 to 1929, when he lived at the Waldorf-Astoria, he changed from a Pierce-Arrow to a Lincoln; witness believes that from 1914 to 1932, Green owned cars registered in New York State (3112-13); that the maximum number of cars was two—a Pierce-Arrow and some other make; later on he had two Lincolns (3114).

Witness identified and counsel for New York gave in evidence N. Y. Ex. No. 19, a statement of the amount paid by Green to the Automobile Club of America from March 22, 1917 to February 1, 1922, for the garaging of automobiles belonging to him kept in the State of New York and the same will be found listed in the Record (3115, 3119-21); the record of the payments was kept at the office, 111 Broadway (3122).

N. Y. Ex. No. 20, a motor license from the State of New York for one Benz car, dated February 1, 1916, and New York Ex. No. 21, a motor license from the State of New York for one Pierce-Arrow car, dated June 16, 1916, both in the name of Edward H. R. Green, 5 West Ninetieth Street, New York City, were given in evidence (3123-3130).

The witness further testified that Green afterwards garaged his cars at the Commodore-Biltmore Garage in New York City during the period from July 13, 1921 to the end of June, 1933, and identified a statement of payments for the Garage's bills which was given in evidence as N. Y. Ex. No. 22 (3131-3144).

Counsel for New York gave in evidence N. Y. Ex. No. 23, a photostat copy of an application by Green for New York registration of a Pierce-Arrow automobile for the year 1922 (3146-3149 and 3150-6), in which his residence was given as "Waldorf-Astoria Hotel, New York; County, N. Y.;

State, N. Y.; Business Address, 111 Broadway, New York."

Also N. Y. Ex. No. 24, a copy of the application of Green for a New York automobile registration or license for a Pierce-Arrow car for the year 1922, giving as the residence address "Waldorf-Astoria Hotel, New York City," and business address, "111 Broadway, New York City" (3158-3162).

Also N. Y. Ex. No. 25, application by Green for New York license for the year 1922 for a Pierce-Arrow car, giving the same residence and business address (3163-6).

Witness testified that these Exhibits indicated that two Pierce-Arrow cars and one Benz car were registered in Green's name in New York City for 1922 but it may have been that one of the cars was exchanged during that year (3166); that payments made on Green's cars for registration fees and garage charges are shown by the books at 111 Broadway from 1916 on but not previously (3168).

A statement prepared by witness of such payments was given in evidence as N. Y. Ex. No. 26, covering the years 1921 to 1929 (3170).

Counsel gave in evidence N. Y. Ex. No. 27, receipt of the Collectors Club, 120 West Forty-Ninth Street, dated New York, November 1, 1918, for life membership fee paid by Green (3174). Also N. Y. Ex. No. 28 from the Secretary of the Collectors Club, dated October 11, 1921, regarding a mistake made in sending a bill to him as a life member (3177-8).

Also N. Y. Ex. No. 29, on letterhead of the Trustees of the Collectors Club, dated New York, January 19, 1926, acknowledging receipt of Green's check for $2500 towards the "Permanent Home Fund" (3180-1).

Also N. Y. Exs. Nos. 30 and 31, membership cards of Green in the Collectors Club for the years 1926 and 1934 (3183-4), indicating that Green continued to be a member until the time of his death.

The witness further testified that during the time he was with Green he never paid any income tax to any State but paid personal property taxes to the State of Massachusetts which were included on his regular real estate bill from the Town of Dartmouth and also a personal property tax on his household effects to the State of Florida on bills rendered by the City of Miami Beach and by Dade County (3185); that during the period witness was connected with

him, he paid real estate taxes to the State of Texas but, to witness' knowledge, no other than the poll tax (3187); in Massachusetts, the personal property tax was on his household effects and tangible property there situated (3187); during the period of witness' connection with Green, the only personal property taxes he paid were the Federal income tax, the poll tax in Texas, the personal property tax in Florida upon tangibles, the personal property tax on his tangibles in Massachusetts and the personal property tax to the State of New York (3187-8); that at the office, 111 Broadway, they kept records of Green relating to his personal business affairs; the books were mostly kept by witness but some of the details were handled by others (3189); no bills were paid by witness except after consulting Green, except when he was in Florida or Texas; Mrs. Wilks signed checks in his absence under power of attorney (3189-90); when not in the State of New York the office, 111 Broadway, kept in daily communication with him and asked his advice; the ordinary business of the office was transacted without consulting him; the securities of the Windham Realization Company were kept at 111 Broadway in a fireproof and burglar proof safe, those of the Westminster Company were kept in a safe deposit vault or at the Chase or Seaboard Bank; securities of the Westminister Company were kept in a safety deposit vault at the National Park Bank; they also had some vaults with the Commercial Trust Company and the New Jersey Title Guaranty and Trust Company; the securities of the Green Estate, Incorporated, were kept principally at the National Park Bank and Seaboard Bank; they were handled the same as the securities of the Westminster Company, of which it was the outgrowth; in the safe deposit box in Jersey City, the securities of the Westminster Company and Green Estate, Incorporated, were kept and Green's personal securities were kept at the National Park Bank and the Seaboard Bank and in the office (3192-4); those at the National Park Bank were not in the custody of the Bank but in the same vault with the other securities; those at the Seaboard were in the custody of the Bank; certain of his securities were also kept in the safe at 111 Broadway; aside from the vault rented by him at the National Park Bank he did not rent any safe for the safekeeping of securities but had storage space in the New York Produce Exchange and Storage Company (3194-5).

The witness further testified that the office, 111 Broadway, managed the affairs of Mrs. Wilks in the same manner Green's business was taken care of and when he was Trustee of her estate, he gave all of his time and attention to her affairs; separate records and accounts were kept of her securities (3196); when Green was away from New York the bills were handled by Green himself, the checks prepared by his secretary and the paid check or voucher would come to the office (3197-8).

Witness further testified that Nos. 5 and 7 West Ninetieth Street were owned by the Edward Mott Robinson Estate and upon Hetty Green's death, the property was disposed of by her Will and Green became the owner of 5 West Ninetieth Street and thereafter he paid the taxes (3198-9).

He further testified that when Green was in New York he was in very frequent contact with the office; that the daily mail contact system started when he was away for a long time, like at South Dartmouth or in Florida (3204); that up to the time of her death, Mrs. Hetty Green owned the bonds of the Texas Midland Railroad (3342) and the stock, other than Directors' shares, was owned by the Westminster Company (3205).

Witness further testified that Green paid one-half of all of the taxes levied on the piece of property that was still in the name of Hetty H. R. Green at Round Hills, Massachusetts, which he believes included the land upon which the house was built; the balance of the tax was paid by Mrs. Wilks (3209).

N. Y. Ex. No. 37, a photostat copy of an application of Green for membership in the American Museum of Natural History was given in evidence, containing the notation "Invited January 19, 1917; Elected January 26, 1917; Paid January 23, 1917."

Also N. Y. Ex. No. 38, a life membership ticket of Green in the American Museum of Natural History was given in evidence (3210-12).

The witness further testified that he (Green) was accustomed to attend theatres in New York City; that he had great interest in stamps and when he bought something rare would show it to him once in awhile; that he belonged to the American Philatelic Society of New York City (3215); that Green alone had access to the safety deposit boxes in the National Park Bank and after he was unable

to go himself he gave authority to Mrs. Wilks, when accompanied by the witness (3216-18); the safety deposit box at the National Park Bank was downstairs below the street level and the only way of getting down there was by walking; there were no other safety deposit boxes in Green's individual name; those at the National Park Bank were in the name of the Hetty H. R. Green Estate, of which he was Trustee, and he had some of his own securities there (3218-19); Green, as Trustee of the Estate, had access to the storage space in the vaults of the New York Produce Exchange Safe Deposit and Cold Storage Company which were located below the street level and retained access until the time witness and Mrs. Wilks were given access, as in the case of the Park Bank (3220-1).

Witness identified the statement of Green's income from the Estate of Hetty Green and also his personal income from January 1, 1917 until the end of 1929, prepared under his direction from the records at 111 Broadway, same was given in evidence as N. Y. Ex. No. 39 (3221-3223; 3226).

Year	"E. H. R. Green Income From Estate of H. H. R. Green	E. H. R. Green Income	E. H. R. Green Total Income
1/1/17 to 7/10/17...	$1,218,495.49		
		(Year) (1917)	
7/10/17 to 12/31/17.	282,087.06	$690,996.32	$2,191,578.87
1918.....	1,292,513.49	324,926.81	1,617,440.30
1919.....	1,279,350.77	341,835.00	1,621,185.77
1920.....	1,265,320.73	315,953.66	1,581,274.39
1921.....	1,247,610.10	268,704.24	1,516,314.34
1922.....	1,198,716.04	276,794.35	1,475,510.39
1923.....	1,166,169.59	292,316.89	1,458,486.48
1924.....	1,152,523.82	304,666.03	1,457,189.85
1925.....	1,164,380.91	330,590.60	1,494,971.51
1926.....	1,151,237.49	326,814.79	1,478,052.28
1927.....	433,230.37	1,055,579.66	1,488,810.03
1928.....	73,049.77	1,380,163.66	1,453,213.43
1929.....	4,513.24	1,594,748.59	1,599,261.83
	$12,929,198.87	$7,504,090.60	$20,433,289.47" (3226.)

The witness further testified that his relationship with Mrs. Wilks was similar in a business way to his relationship with Green (3226-7); that she now lives at 988 Fifth Avenue, New York City, and has always lived in that City since he knew her (3227).

Counsel for New York then gave in evidence, as N. Y. Ex. No. 40, photostat copy of a letter from Green to Mrs. Wilks, dated August 24, 1926 (3228-33).

"DEAR SISTER:

I have given considerable thought to your letter of recent date in regard to your home, and I think your suggestion of moving into an apartment a wise one, for more reasons than one. I don't think it a good plan for a lady to live in a house by herself, as she will have a world of entertaining to do, which I know you do not like. Here are some things to remember in getting an apartment:

1st. Don't take too long a lease. After picking out an apartment you like and live there awhile, you don't want to then decide that you do not like the locality.

2nd. You want to be pretty careful who your neighbors are, so that your surroundings may be enjoyable.

3rd. I would get into an apartment house large enough so that they have a cafe or restaurant in connection with it, so that in the event you have trouble with your employes, you can order your meals from below.

4th. If you get into a large apartment house, it is nice to feel that you can lock your door, go away and not feel tied down.

5th. I don't see anything to prevent your having an apartment in New York, as you pay your personal taxes there anyway, and it is the same as though you were living in your own house on 81st Street.

I note what you say about your furniture. I would not take any of the furniture away from Greenwich, but would furnish the apartment with what you can get together in New York, and then buy exactly what you want for the apartment to give you the most comfort. Remember, we are only here for a little while and the only enjoyment we can have for the remaining time is our surroundings; therefore, I would not hesitate to buy whatever furniture is actually needed, with the idea of getting the most comfort out of it.

I would take a little time in picking my apartment, for I know that after you get located you will probably never want to move out of it. I would see that the building was a thoroughly fire-proofed building, and I would not go too far up in height, nor too low. From the sixth to the tenth floors are the best; you get above the noise and dust, and it is cool if you have to remain there during the summer.

Why don't you and Annie come up and visit Uncle Ned and his goats? You want to remember that you are always welcome at Round Hills, and we would be delighted to see you.

With lots of love,

Your affectionate brother."

(3231-3.)

The witness further testified that some time later in 1926, Mrs. Wilks moved into 988 Fifth Avenue and has lived there ever since; prior to that she lived in the house on West Eighty-First Street owned by Mr. Wilks, who died the first part of August, 1926; that the above letter was probably written from Round Hills, Massachusetts (3234); Mrs. Wilks also owns a house in Greenwich, Connecticut, where she spends the Summers (3235).

The witness further testified that Mrs. Wilks had a young girl she was interested in attending St. Mary's Convent, an Episcopal preparatory school for girls at Peekskill, New York, and Colonel Green had some one he was interested in attending Wellesley; they decided to contribute to both institutions jointly as a memorial to Hetty H. R. Green, $250,000 to St. Mary's and $500,000 to Wellesley (3236-7).

A letter dated December 14, 1923, from Green to the Sister Superior of St. Mary's School, Peekskill, New York, was given in evidence as N. Y. Ex. No. 41 (3238-41).

"Upon the return of my sister, Mrs. Wilks, from her visit to your school, we discussed the matter of helping your school. As you are probably aware, our mother left her estate in trust for several years after her death, and, therefore, whatever we do must come from our incomes.

It has been the desire of Mrs. Wilks and myself to do something for our fellow beings and at the same time have it become a memorial to our mother, and, for that reason, we make to your school the following proposition:

We propose to make an annual donation of Twenty-five Thousand ($25,000.00) dollars each for five consecutive years, making a total of a quarter of a million dollars, provided Saint Mary's School shall cause to have erected a building to be known as Hetty H. R. Green Hall, as a memorial to our mother.

The first payment can be made between this date and January 1st, 1924, and the succeeding four annual pay-

ments at times most convenient for Saint Mary's School. This agreement will be made binding upon the decease, in the case of either my sister or myself, so there will be no question as to the school securing the full amount." (3240-1.)

Also a photostat copy of a letter from the Mother Superior to Colonel Green, dated October 20, 1926, as N. Y. Ex. No. 42, was given in evidence (3241-5).

"We cannot adequately express to you our great gratitude for this wonderful addition to our school plant. It is complete in every way. The large new study hall is a beautiful room, and can be used for lectures as well as for its own purpose. The special rooms for the music department are the greatest convenience. The girls who occupy the two dormitory corridors are the objects of envy among all the others less favored. The infirmary on the top floor equips us for every emergency from an epidemic of contagious diseases to some very serious illness. The solarium at the southwest end could even be used for an operating room. In the nearly sixty years since we have been carrying on St. Mary's School we have never had such a large and generous gift, and our hearts are full of deep thankfulness.

At the entrance to the vestibule in the sallyport before the study hall we have the bronze tablet with the inscription you prepared. A little later we shall have a photograph of this entrance taken in order that you may see it" (3244).

N. Y. Exs. Nos. 43, 43-A and 43-B, photographs of the Hetty Green Memorial Wing at St. Mary's School, Peekskill, New York, of the tablet and inscription thereon were given in evidence (3246-8). The inscription on the tablet was "In Memory of Their Mother, Hetty H. R. Green, born November 21, 1834, died July 3, 1916.

Edward Howland Robinson Green. H. Sylvia Ann Howland Green Wilks" (3247).

The witness further testified that during his acquaintance with Green his closest relatives were his mother, sister and wife (3249).

N. Y. Ex. No. 44, Green's application for membership in the International Chamber of Commerce, dated January 2, 1925, in which his address was given as 111 Broadway, New York City, and it was stated he was a member of the New

York Chamber of Commerce, was given in evidence (3250).

N. Y. Ex. No. 45, Green's letter of January 2, 1925, enclosing his check for $100 for associate membership in the International Chamber of Commerce was also given in evidence (3251-2). Witness testified such membership continued up to his death (3252); he further testified that Green was a member of the Union Club of New York City from some time prior to 1914 until his death; notices from the Club were addressed to him at 111 Broadway (3258-9).

N. Y. Ex. No. 46, a receipt for dues of Green for the year 1936 was given in evidence (3259-60).

He further testified that Green was a life member of the New York Athletic Club at Central Park South, Fifty-Ninth Street and Seventh Avenue, New York City, and N. Y. Ex. No. 47, a receipted bill for dues as life member, dated December 10, 1912, was given in evidence (3261-3), and his application, dated October 25, 1912, for resident membership was given in evidence as N. Y. Ex. No. 48, and gives his residence as 5 West Ninetieth Street, New York City (3264-6).

N. Y. Ex. No. 49, a photostat copy of an affidavit of Walter L. Hough, Executive Secretary, from the records of the Surrogate's Court, Essex County, in the Matter of the Probate of the Will of E. H. R. Green was given in evidence, in which affiant stated that the constitution of the New York Athletic Club defined resident membership as one who resides within a radius of thirty miles of the Club House or one who remains within such territory for three consecutive months during each calendar year (3269).

The witness further testified that Green was a member of the Columbia Yacht Club from some time in 1911 until his death. N. Y. Ex. No. 50, his application for membership in such Club, dated September 8, 1911, was given in evidence, in which his business address was given as 111 Broadway and his residence as 5 West Ninetieth Street; that this Club was located on the North River, New York City (3270-1-2).

He also testified that Green was a member of the Metropolitan Museum of Art of New York City from 1914 and elected to a life membership or fellow for life in 1918, and mail relating to the Museum was sent to him at 111 Broadway.

His membership ticket for the year 1932 was given in evidence as N. Y. Ex. No. 51 (3274-5).

He also testified that Green was a member of the Atlantic Yacht Club and N. Y. Ex. No. 52, notification of his election to regular membership in the Club, dated January 11, 1912, and N. Y. Ex. No. 53, letter from Green enclosing his check for annual dues to February 15, 1913, were given in evidence (3276-9).

N. Y. Exs. Nos. 54, 54-A, B, C, D and E, statements of account of Green with said Club were given in evidence (3280-4).

Also N. Y. Ex. No. 55, dated April 2, 1934, addressed to members of the Club, and N. Y. Ex. No. 56, addressed to members of the Club, dated February 23, 1935, relating to the dissolution of the Club, were given in evidence (3286-9).

N. Y. Ex. No. 57, a letter to Green notifying him of his election to life membership in the Lake Placid Club (N. Y.); N. Y. Ex. No. 58, a copy of a letter of Green's secretary enclosing check for fees and dues, were given in evidence, with his life membership card, N. Y. Ex. No. 59 (3290-2-3).

Counsel for New York also gave in evidence the following Exhibits:

N. Y. Ex. No. 60, copy of an agreement made by Green with the Aeolian Company April 26, 1929, for one Victor Automatic Combination (3296-8), signed by Green and giving his "home address" as Sherry-Netherland Hotel.

Also N. Y. Exs. Nos. 61-65, statements relating to Green's membership in the Association for Stamp Exhibitions, Inc., of New York City (3299).

In No. 63, dated December 17, 1925, addressed to Green at 111 Broadway, New York City, it was stated that among others appointed by the Chairman as a committee on ways and means to solicit funds was "Colonel E. H. R. Green, New York," and No. 64 was an acknowledgment of his subscription for $2500 to the 1926 Exhibition to be held in New York that year (3302-4).

Said witness further testified that Green continued as a member of this Society until the time of his death and in the 1926 Exhibition there was an exhibit marked as his (3306). He further testified that the office force at 111 Broadway was paid most of the time by the Windham Realization Company; that witness was paid at one time by the Westminster Company, by the Estate of Hetty Green and by the Green Estate, Incorporated; that the staff at 111 Broadway took care of all of the personal affairs of Colonel Green and Mrs. Wilks and also the affairs of the Corporation but

none of the employees except himself were paid by either Green or Mrs. Wilks personally (3307); that the neighborhood around 5 and 7 West Ninetieth Street, between Central Park West and Amsterdam Avenue, on both sides of the street, was principally three or four story houses with brown stone fronts and basement; that across the street from 5 and 7 West Ninetieth Street was a garage, originally a private stable; there was no material change from the time witness went there until 1918 (3308). Witness further testified that he never received any letter from Green stating that he had changed his legal residence to Florida (3308); that the Chase Bank litigation which caused Green to remain outside of New York during the latter years of his life, under advice of counsel, started in 1933.

Thereupon, counsel for New York gave in evidence correspondence between Green and his counsel, Charles W. Pierson, respecting this litigation, being N. Y. Exs. Nos. 66 to 75, inclusive, covering the period from October 31, 1933 to December 14, 1933 (3310).

In Ex. No. 70, letter from Pierson to Green (3324) he stated, among other things, "You cannot be sued in the New York courts without personal service here and I doubt whether suit would lie in the courts of Massachusetts or Florida on account of the difficulty of getting jurisdiction of the Chase Bank, a necessary party" (3325), and in Green's reply, Ex. No. 71, November 14, 1933, he says,

"In answer to your letter of November 9th will say that as stated in your letter, I am in Massachusetts and can remain here for a reasonable length of time, but the weather is getting very cold. I know of no way of getting to Florida without going through the State of New York and going down on the train in our car we will have to go over Hell Gate Bridge and come into the Pennsylvania Station, where we would remain for about an hour and a half during the midnight hours" (3327).

In Ex. No. 74, dated December 12, 1933, from Pierson to Green at 46 Star Island, Florida, he says,

"I assume that by this time you are in your winter home. Trust you had a comfortable trip with no disturbing incidents.

Counsel for the Bank called me this morning to ascertain whether you had yet been served with papers. He said that

in certain of the suits active efforts are apparently being made to serve individual defendants. He invited me again to join in the conferences of counsel which are being held almost daily to discuss questions of procedure and strategy" (3334-5).

In Ex. No. 75, Green to Pierson, December 14, 1933, from Star Island, Miami Beach, Florida, he said,

"We left New Bedford Sunday the 10th and arrived here Tuesday morning, where the weather is very beautiful. The trip didn't tire me much and am feeling pretty well today. We were in New York only a few minutes and I was not bothered by any legal service there, on the way down or since I arrived here" (3337).

Counsel for New York also gave in evidence N. Y. Ex. No. 76, copy of a letter from David L. Stehr, of New York City, to Edward H. R. Green, Terrell, Texas, dated March 9, 1936, advising him of a suit instituted on behalf of the stockholders against the Directors of the Chase National Bank, etc., and stating, "I have tried to effect service upon you in New York, but without success. Therefore I enclose herewith a copy of the Summons and Complaint in the action to enable you to appear and defend" (3339).

Counsel agreed that the Union Club of New York has been for many years one of the leading social organizations of that City (3343).

Said witness further testified that during the time he was connected with Green, his banking to a large extent was done in New York City but there were substantial amounts at times in Banks outside of New York, at New Bedford, Massachusetts, the Bank of the Bay of Biscayne and the First National Bank of Miami Beach, Florida; at the time the house at Round Hills was under construction he had $100,000 or $200,000 at a time in the New Bedford Bank to pay the contractors, etc. (3344-5); at other times the balance would be in the neighborhood of $25,000; at the time of buying the property in Florida, he had in the neighborhood of $150,000 or $200,000 in the Bank of the Bay of Biscayne for financing the construction, etc.; this Bank closed with considerable loss to him and later in the Miami Beach Bank his balance ran from $30,000 to $45,000 (3343); in New York his average balance ran from to $200,000 to $400,000 (3346);

that in connection with the education of one Jennie Turpaud, a French War orphan, Green submitted a sworn statement to the Department of Labor, Immigration Service in 1919, N. Y. Ex. No. 77, in which he stated among other things:

"12. Name and age: Edward H. R. Green—51 years.
13. Place of birth: London, England—American parents.
14. Date of arrival in the United States, month and year: 1876.
15. Name of steamer and line: Cunard Line.
16. Have you taken out either (a) first papers or (b) full citizenship papers? If either question answered 'Yes' state precisely when and where: Parents American citizens.
17. Where do you live, city, street, and number? Waldorf Astoria, New York City.
18. How many rooms do you occupy and how many persons now live in them? * * *
19. Are you married: If 'yes,' give maiden name of wife, her age, and where she lives: Yes. Mabel Harlow—of lawful age.
20. Give names and ages of all your children and state where they are: None.
21. Describe fully your physical condition. State how often, and why, incapacitated for work since arrival in United States: Good—not incapacitated.
22. Regular occupation: Trustee of the Estate of Hetty H. R. Green.
23. How long have your followed this occupation and what other occupations have you had: Since her death—In various executive capacities as well as President of the Texas & Midland R. R. for 24 years" (3351-2).

The witness further testified that Green was a life member of the Aero Club of America and so continued until his death, a notification of his election, dated April 26, 1918, N. Y. Ex. No. 78, and membership card, N. Y. Ex. No. 79, were given in evidence (3356-9). He further testified that Walter P. Allen is President of the American National Bank of Terrell, Texas, and an old friend of Green's in Texas, and that Earnest R. Duff was steward of his yacht "United States" and afterwards his house steward for several years (3360).

On cross-examination by counsel for Texas, the witness further testified that after 1921 Green did not visit the of-

fice, 111 Broadway and outside of the infirmities testified to by Dr. Pascal he was then in perfect health, so far as he knew (3363); that his instructions were always to name him as a legal resident of Terrell, Kaufman County, Texas, and in the preparation of documents and until the day of his death there was no change in these instructions (3364).

On cross-examination by counsel for Massachusetts, he testified that after the storage of the two automobiles was completed in New York some time in 1933, they were taken to South Dartmouth, Massachusetts, and so far as he knows remained there for the rest of Green's life (3364); that at the time of the death of Mrs. Hetty Green in July, 1916, title to the two houses, 5 and 7 West Ninetieth Street, was in Mrs. Wilks as a result of the foreclosure of mortgages on them and so remained until they were sold in 1928; the beneficial title passed under Hetty Green's Will to Colonel Green (3365); during most of the time he occupied the house title was in his sister but shortly after his mother's death Green in August, 1916, moved his business office to 111 Broadway (3366); the occupation of 7 West Ninetieth Street was due to Mrs. Hetty Green's desire to make use of that family-owned property and also to be more convenient for the Colonel (3366). Witness identified Mass. Exs. Nos. 54 and 55 regarding bills for room charges rendered by the Waldorf-Astoria Hotel, which he wrote for Colonel Green (3368); he further testified that the trust under the Will of Mrs. Hetty Green continued for ten years after her death, when the Green Estate, Incorporated, was formed, and that the property at Round Hills was carried as an entity of the Green Estate without division, so that the beneficial interest was in Green and his sister; the Green Estate was incorporated under the laws of Delaware (3373); that under Green's Will, he provided that in the event of his death all of his property should go to his mother and if she did not survive him, to his sister, Mrs. Wilks (3374).

Witness identified photostat copy of the ante-nuptial agreement between Green and Miss Harlow and the Columbia Trust Company, dated June 26, 1917. In connection with this offer, the Special Master read into the Record a letter from the Clerk of the Supreme Court of the United States enclosing an order dismissing the suit as to Mabel Harlow Green, which was as follows:

"I write to inform you that the Court today entered the following order in the case of the State of Texas vs. the State of Florida, et al., No. 12, Original, October Term, 1937:

'Upon consideration of the motion of Mabel Harlow Green that the bill of complaint in this cause be dismissed as to her, and of the stipulation of the parties to the cause, attached thereto, consenting to the granting of such relief, the motion is granted and the bill of complaint is dismissed as to the said Mabel Harlow Green, without costs as to her' " (3377).

The aforesaid agreement was given in evidence as Mass. Ex. No. 56 (3382, 3383-90).

The witness further testified that any checks or drafts drawn upon Green's account in 1928 would have come to his attention; that from his knowledge and examination of the records there was no draft on Green's account by William McDonald or any one else in 1928 (3390-1); that the last contribution to William McDonald according to the records was June 28, 1920, for $3,000 (3391); that after Green's injury in October, 1921, he never came to the office and they transacted their business with him by personal visits or correspondence (3392); when he was away they kept a record of where his mail was to be sent; they would receive advice from Green where he expected to be on certain days and from these notations the office records were made up (3395-8-9). This record of Green's movements covering the period from July 1, 1921 to June 11, 1936, was given in evidence as Mass. Ex. No. 57 (3401-4).

The witness, in response to questions by counsel for Massachusetts, pointed out that from this Exhibit Green arrived at South Dartmouth, Massachusetts, invariably on July 1st, but made no statement to witness of his reason for doing so; that in 1934, he arrived there on June 21st and in 1935 on June 16th (3405). Said Exhibit is set forth in the Record (3407-10), and is as follows:

"South Dartmouth, Mass.	7/ 1/21-10/15/21
Dallas, Texas	10/28/21-11/ 2/21
Marlin, Texas	1/23/22- 4/20/22
Dallas, Texas	4/21/22- 5/ 5/22
South Dartmouth, Mass.	7/ 1/22-12/15/22
Miami Beach, Fla.	3/ 8/23- 3/22/23
Jacksonville, Fla.	3/26/23- 4/27/23
Dallas, Texas	4/28/23- 5/ 8/23

South Dartmouth, Mass.	7/ 2/23-10/31/23
Jacksonville, Fla.	1/ 8/24- 3/10/24
Miami Beach, Fla.	3/10/24- 4/21/24
Marlin, Texas	4/21/24- 5/20/24
South Dartmouth, Mass.	7/ 1/24-12/22/24
Miami Beach, Fla.	1/ 3/25- 4/14/25
Marlin, Texas	4/16/25- 5/11/25
South Dartmouth, Mass.	7/ 1/25-12/ 1/25
Miami Beach, Fla.	2/ 1/26- 4/25/26
Marlin, Texas	4/27/26- 6/ 3/26
South Dartmouth, Mass.	7/ 1/26-12/10/26
Miami Beach, Fla.	1/19/27- 4/ 9/27
Marlin, Texas	4/11/27- 5/22/27
South Dartmouth, Mass.	7/ 1/27-12/ 6/27
Miami Beach, Fla.	1/ 1/28- 5/17/28
South Dartmouth, Mass.	7/ 2/28-12/15/28
Miami Beach, Fla.	1/ 4/29- 4/11/29
South Dartmouth, Mass.	7/ 1/29-12/15/29

Colonel E. H. R. Green.

	Arrived	Left
New York	12/16/29	1/4/30
Miami Beach, Fla.	1/ 6/30	5/30/30
New York	6/ 1/30	6/30/30
South Dartmouth, Mass.	7/ 1/30	11/ 3/30
Asheville, N. C.	11/ 5/30	12/10/30
Miami Beach, Fla.	12/11/30	5/30/31
New York	6/ 1/31	6/30/31
South Dartmouth, Mass.	7/ 1/31	12/ 6/31
New York	12/ 7/31	1/10/32
Miami Beach, Fla.	1/12/32	5/28/32
New York	5/31/32	6/30/32
South Dartmouth, Mass.	7/ 1/32	10/23/32
Lake Placid, N. Y.	10/24/32	12/15/32
New York	12/16/32	1/19/33
Miami Beach, Fla.	1/21/33	5/13/33
Lake Placid, N. Y.	5/16/33	6/12/33
New York	6/13/33	6/30/33
South Dartmouth, Mass.	7/ 1/33	12/10/33
Miami Beach, Fla.	12/12/33	6/18/34
South Dartmouth, Mass.	6/21/34	12/16/34
Miami Beach, Fla.	12/18/34	5/11/35

	Arrived	Left
Marlin, Texas	5/14/35	6/16/35
South Dartmouth, Mass.	6/19/35	11/23/35
Miami Beach, Fla.	11/25/35	4/26/36
Lake Placid, N. Y.	4/29/36	

Colonel Green died 6/8/36 about 2:40 P. M. Funeral car left Lake Placid 6/9/36 for South Dartmouth, Mass.

Funeral car left South Dartmouth, Mass. 6/11/36 for Bellows Falls, Vt.

Interment at Bellows Falls, Vt. 6/12/36.

2/ 4/22- 4/24/22	Arlington Hotel, Marlin, Texas
5/ 5/22- 5/ 8/22	Adolphus Hotel, Dallas, Texas
3/19/23	Royal Palm Hotel, Miami, Fla.
4/12/23	Windsor Hotel, Jacksonville, Fla.
5/ 7/23	Adolphus Hotel, Dallas, Texas
5/24/24	Arlington Hotel, Marlin, Texas
5/20/25	Arlington Hotel, Marlin, Texas
5/20/26	Arlington Hotel, Marlin, Texas
5/ 2/27	Arlington Hotel, Marlin, Texas."

(3407-10.)

On cross-examination by counsel for Massachusetts, the witness further testified that upon Green's death at Lake Placid the remains were taken to South Dartmouth and the services held at Round Hills; that the interment was in the lot at Bellows Falls, Vermont, where Green's mother and father were interred; that Mrs. Wilks was ill in the hospital and unable to attend the funeral (3411).

The witness identified a copy of Green's Last Will and Testament executed March 28, 1908, before witnesses residing in Dallas, Texas, and the same was offered in evidence as Mass. Ex. No. 58, and is as follows (3412-14):

"In the Name of God, Amen.

I, Edward H. R. Green, of Terrell, State of Texas, being of sound and disposing mind and memory, and considering the uncertainty of this life, do make, publish and declare this to be my last Will and Testament, as follows: First, after my lawful debts are paid, I give, bequeath and devise to my Mother, Hetty H. R. Green, of Bellows Falls, State of Vermont, if she is living at the time of my death, all my estate, both real and personal, and, should she not be living at the

time of my death, then I give, bequeath and devise all my estate, both real and personal, to my sister, Hetty Sylvia A. H. Green, of Bellows Falls, Vermont.

I hereby appoint my Mother, Hetty H. R. Green, my sister, Hetty Sylvia A. H. Green, without Bond, to be Executrices of this my last Will and Testament; hereby revoking all former Wills.

In Witness Whereof, I have hereunto subscribed my name, and affixed my seal, the twenty-eighth day of March, in the year of our Lord, one thousand nine hundred eight.

(Signed) Edward H. R. Green.

Witnesses:

(Signed) E. J. Gannon. E. M. Reardon. A. V. Lane.

Subscribed by Edward H. R. Green, the Testator named in the foregoing Will, in the presence of each of us, and at the time of making such subscription the above Instrument was declared by the said Testator to be his last Will and Testament and each of us, at the request of said Testator and in his presence and in the presence of each other, sign our names as witnesses thereto, at the end of the Will.

(Signed) E. J. Gannon, Residing Dallas, Texas.
(Signed) E. M. Reardon, Residing Dallas, Texas.
(Signed) A. V. Lane, Residing Dallas, Texas" (3412-14).

The witness further testified that he had prepared a tabulation of Green's contributions to charitable organizations in the several States from the ledger accounts bearing that heading; that the Round Hills Radio Corporation and Whaling Enshrined were incorporated as charitable corporations under the laws of Massachusetts and the contributions to them are shown on a separate sheet (3416). In response to questions by counsel for Texas, witness said that the contributions shown on the tabulation to the American Legion of Texas did not include the purchase of coins, which would add $2,000 more; that the tabulation was made from payments that went through the bank account and came into the office and shows the contributions listed in the probate proceedings in the Surrogate's Court of Essex County, New York; that the list possibly would not include contributions made by Green in cash or in some one else's name (3420-1); that the tabulation is not absolutely complete as to Florida donations but is complete so far as their office records go; that the Florida list contains some items that were paid but

which they did not consider contributions and had not listed as such (3422); that the tabulation reflects the contributions reported in Green's Federal income tax returns but his contributions over a number of years are more than permitted by his income tax returns (3424); that the Exhibit did not include any contributions for the education of so-called wards or French orphans which were considered personal matters, nor does it include all contributions Green made for charitable purposes in New York but all that is shown in these records (3425). Said lists or tabulations were thereupon given in evidence as Mass. Ex. No. 59 (3425).

Massachusetts Exhibit No. 59-A

"E. H. R. Green Contributions

Date	Name	Amount
10/23/20	Community Welfare Fund—New Bedford	$1,500.00
5/17/21	Wellesley College	5,000.00
11/25/21	New Bedford Community Welfare Fund	2,000.00
11/17/22	Congregational Church	150.00
11/27/22	New Bedford Community Welfare Fund	1,000.00
10/29/23	New Bedford Community Welfare Fund	1,000.00
12/27/23	Wellesley College	50,000.00
1/ 2/24	Wellesley College	50,000.00
11/ 8/24	New Bedford Community Welfare Fund	1,000.00
1/ 1/25	Wellesley College	50,000.00
11/28/25	American Legion Fund	1,000.00
11/ 5/25	New Bedford Community Welfare Fund	2,000.00
12/ 4/25	Red Cross	10.00
1/ 1/26	Wellesley College	50,000.00
7/15/26	Massachusetts Institute of Technology	3,500.00
7/27/26	M. L. Kelly, Treas., U. S. Junior Nautical Training School	1,000.00
11/18/26	New Bedford Community Welfare Fund	2,000.00
11/19/26	Massachusetts Institute of Technology	7,000.00
1/ 1/27	Wellesley College	50,000.00

Date	Name	Amount
6/27/27	Donald McKay, Memorial Fund Boston	1,000.00
8/13/27	Massachusetts Institute of Technology	10,000.00
10/29/27	New Bedford Community Welfare Fund	1,000.00
6/18/28	Massachusetts Institute of Technology	20,000.00
12/ 1/28	Red Cross	10.00
12/ 6/28	New Bedford Y. W. C. A.	1,000.00
12/14/28	New Bedford Community Welfare Fund	1,000.00
2/12/30	Massachusetts Institute of Technology	28,760.00
6/30/30	Massachusetts Institute of Technology	10,000.00
12/ 2/30	Red Cross	10.00
1/ 5/31	Massachusetts Institute of Technology	10,000.00
7/ 8/31	State Reclamation Board	500.00
7/10/31	Massachusetts Institute of Technology	10.000.00
11/ 2/31	Disabled American Veterans	25.00
11/27/31	Red Cross	10.00
1/25/32	Massachusetts Institute of Technology	10,000.00
6/14/32	Wheaton College	1,000.00
7/ 8/32	Massachusetts Institute of Technology	10,000.00
1/ 4/33	Massachusetts Institute of Technology	10,000.00
7/ 5/33	Massachusetts Institute of Technology	10,000.00
		$412,475.00"

Massachusetts Exhibit No. 59-B

"E. H. R. Green Contributions

To Organizations Within the State of New York

Date	Name	Amount
3/ 5/17	Junior Naval Reserve	20.00
4/23/17	Bide-a-Wee Home	100.00

Date	Name	Amount
5/20/18	American Red Cross	1,000.00
5/24/18	American Red Cross	1,000.00
5/24/18	American Red Cross	150.00
5/24/18	American Red Cross	250.00
12/11/19	American Red Cross	2.00
12/22/19	Bide-a-Wee Home	25.00
1/28/20	Rev. P. J. Magrath	250.00
5/10/20	Dickson Colored Orphanage	1,000.00
5/ 7/20	Peoples Institute	250.00
12/ 2/20	New York Tuberculosis Assn.	5.00
1/27/21	Fordham University	10,000.00
3/ 1/21	Chrystie Street House	50.00
3/ 1/21	St. Peters Mission	100.00
12/ 2/21	Red Cross	5.00
12/ 4/23	Red Cross	5.00
1/30/23	St. Elizabeth Hospital	2,000.00
12/17/23	Waldron School	500.00
12/21/23	Bide-a-Wee Home	100.00
12/27/23	Sisterhood of St. Mary, Inc.	25,000.00
1/ 2/24	Sisterhood of St. Mary, Inc.	25,000.00
12/ 4/24	Red Cross	500.00
1/ 1/25	Sisterhood of St. Mary, Inc.	25,000.00
12/ 4/25	Red Cross	5.00
12/12/25	Red Cross	2.00
1/ 1/26	Sisterhood of St. Mary, Inc.	25,000.00
11/26/26	Red Cross	10.00
1/ 1/27	Sisterhood of St. Mary, Inc.	25,000.00
12/ 1/27	Red Cross	10.00
12/ 3/27	Mary Washington Hospital	250.00
6/ 4/28	Bide-a-Wee Home	100.00
6/10/29	New York Skin & Cancer Hospital	50.00
12/27/29	Bide-a-Wee Home	10.00
2/17/21	Bide-a-Wee Home	5.00
2/ 2/32	Bide-a-Wee Home	5.00
4/27/32	Bide-a-Wee Home	5.00
		$142,764.00"

Massachusetts Exhibit No. 59-C

"E. H. R. Green Contributions

To Organizations Within the State of Texas

Date	Name	Amount
2/23/21	Girls Friendly Society of Texas	$50.00
8/ 5/21	Dallas Y. M. C. A.	3,125.00
5/ 3/36	Texas Memorial Museum	750.00
		$3,925.00

To Organizations Miscellaneous as to Locality

Date	Name	Amount
5/ 1/22	Ethel Walker School (Connecticut)	$ 50.00
5/14/25	Chamber of Commerce U. S. A. (General)	250.00
7/19/30	Veterans of Foreign Wars (General)	797.50
		$ 1,097.50

Massachusetts Exhibit No. 59-D

"E. H. R. Green Contributions

To Organizations Within the State of Florida

Date	Name	Amount
3/25/27	Miami Community Chest	$ 1,000.00
2/21/28	Miami Community Chest	1,000.00
2/ 1/29	Red Cross	1.00
4/ 1/29	Dade County Boy Scouts	25.00
4/ 1/29	Community Chest	500.00
4/ 1/29	F. Lawry Wall—Community Chest	500.00
1/20/30	Committee of One Hundred	500.00
1/23/30	Committee of One Hundred	125.00
1/27/30	Junior League	500.00
1/27/30	Junior League	20.00
1/28/30	Miami Beach Chamber of Commerce	1,000.00
3/ 3/30	Community Church	250.00
5/23/30	St. Patrick's Church	100.00
5/27/30	Miami Jr. Chamber of Commerce	3,000.00
12/24/30	Miami Empty Stocking Fund	500.00
1/20/31	American Legion	10.00

Date	Name	Amount
1/28/31	Miami Beach Chamber of Commerce	1,000.00
2/ 6/31	Community Church	250.00
5/ 6/31	Committee of One Hundred	75.00
1/14/32	Temple of Israel Sisterhood	10.00
1/20/32	Miami Beach Chamber of Commerce	1,000.00
1/29/32	Florida Peace Officers Assn.	50.00
2/ 3/32	National Council of Jewish Women	10.00
2/ 4/32	Junior League	200.00
2/ 4/32	Veterans Assn.	2.00
2/ 5/32	Dade County Community Chest	250.00
3/ 4/32	Miami Beach Community Chest	250.00
4/ 1/32	Miami Unemployment Fund	15.00
1/23/33	Miami Beach Chamber of Commerce	1,000.00
2/28/33	Community Chest, Miami	1,000.00
5/ 5/33	Jackson Memorial Hospital, Miami	5,000.00
3/17/34	Community Church	250.00
2/ 1/35	Community Church	250.00
3/23/35	Saint Francis Hospital	100.00
1/25/36	Miami Beach Chamber of Commerce	1,000.00
		$20,743.00"

(3426-31.)

Witness further testified that Wheaton College and Wellesley College and the Massachusetts Institute of Technology shown on this list were in Massachusetts; that the New York contributions began in 1917 and those of Massachusetts in 1920 (3433-4); that the Bide-a-Wee Home was a home for animals in New York City in which Green and Mrs. Wilks were interested; that Fordham University, New York, was the college he attended as a young man (3437). The witness also produced a tabulation from his books of contributions to the Round Hills Radio Corporation and Whaling Enshrined and the same was given in evidence as Mass. Ex. No. 60 (3446).

"E. H. R. Green Contributions

To Round Hills Radio Corporation and Whaling Enshrined

Date	Name	Amount
1924	Round Hills Radio Corp.	$34,806.68
1925	Round Hills Radio Corp.	58,552.41

Date	Name	Amount
1926	Round Hills Radio Corp.	48,151.31
1926	Whaling Enshrined	11,407.80
1927	Round Hills Radio Corp.	287,732.79
1927	Whaling Enshrined	9,876.65
1928	Round Hills Radio Corp.	310,100.06
1928	Whaling Enshrined	11,487.31
1929	Whaling Enshrined	12,920.01
1929	Round Hills Radio Corp.	505,432.08
1930	Round Hills Radio Corp.	90,325.87
1930	Whaling Enshrined	14,269.16
1931	Round Hills Radio Corp.	29,842.70
1931	Whaling Enshrined	22,914.19
1932	Round Hills Radio Corp.	28,841.17
1932	Whaling Enshrined	14,289.10
1933	Round Hills Radio Corp.	28,943.92
1933	Whaling Enshrined	8,320.56
1934	Round Hills Radio Corp.	42,363.64
1934	Whaling Enshrined	14,203.03
1935	Round Hills Radio Corp.	41,000.73
1935	Whaling Enshrined	7,016.04
1936	Round Hills Radio Corp.	18,414.95
1936	Whaling Enshrined	5,729.09
		$1,656,941.25"

(3446-7.)

The witness further testified that after his injury to his leg in October, 1921, Green gave up entirely his Fall trips to Texas and thereafter began making these developments at South Dartmouth—the radio station, airport, aviation school and laboratory for students of the Institute of Technology (3448); that the mansion at Round Hills was completed about July, 1921, and had been under construction for a couple of years, from 1919 on; that the yacht "United States" was sunk in September, 1919, and the construction at South Dartmouth antedated that by a few months; the architect of the South Dartmouth house was A. C. Bossom, an Englishman now residing in London but at that time living in the United States; he had entire charge of the supervision of the plans and construction; he was a son-in-law of Mr. Bayne, President of the Seaboard Bank (3450).

Thereupon, the witness identified and it was given in evidence Mass. Ex. No. 61, a photostat copy of an agreement between Green and Mrs. Wilks, dated December 17, 1923, in which Green was described as "Edward Howland Robinson Green, of Terrell, Texas," relating to the contribution of $500,000 made by them to Wellesley College for the erection on the campus of an Administration Building to be known as the Hetty H. R. Green Hall, as a memorial to their mother, to cost between $600,000 and $750,000; that the Hall was erected and the payments made by his office (3453-4-5).

On cross-examination by counsel for Florida, the witness testified that his first meeting with Green was in reference to the preparation of his mother's income tax return for the year 1913; that later, just before Christmas, 1913, he saw Green and his mother at 7 West Ninetieth Street; that he had access to her books and did not confer with Green regarding it; that he was engaged upon this work until the return was filed in March, 1914, meanwhile he saw Green there and heard discussions with his mother regarding their business affairs; believes Green was thoroughly familiar with her affairs; they worked together but she was the "master mind"; at that time the Colonel lived next door at 5 West Ninetieth Street and had a household including Miss Harlow and the servants (3466-71); this building was immediately adjoining 7 West Ninetieth Street, where Mrs. Hetty Green had her office; both buildings were similar and under her jurisdiction (3472-3); after the income tax return was finished he continued to work for Mrs. Hetty Green between 1914 and 1916; that Green's fortune was then about $500,000 (3473-4); after Mrs. Hetty Green's death in 1916, Green became the personal owner of the Edward Mott Robinson Estate, of which he was one of the Trustees, and for the next ten years he had a half interest in his mother's estate; that in August 1916, they moved to 111 Broadway which became the center of the business transactions involving the Green interests whether they belonged to Mrs. Wilks or to the Colonel (3474-5); witness had charge of this office and Green came there almost daily when he was in New York, staying from ten or fifteen minutes to two or three hours; that his contact with the witness and the office continued constant for a number of years up to 1921 (3477); in October of that year, while on a trip to Texas, he had a slight accident, was under

the doctor's care for quite a long time and never came back to the office; their communication with him thereafter was by personal contact and correspondence (3477); they first began to get vouchers for expenditures at Round Hills in 1919 and there was a transfer of funds to a local bank at South Dartmouth (3478); in 1919, after the "United States" sank, Green went to a hotel at South Dartmouth and in 1920 stayed on a houseboat (3479); that he got into the house in 1921 (3480); that in 1924, he started the Radio Corporation work and in 1926, the Whaling Ship (3481); that the records show that he went to Miami Beach in March, 1923, the Winter before these outside operations at South Dartmouth began (3482); that in 1924 or 1925, he bought some real estate in Florida and began the Florida operations; when he first went there he stopped at the Royal Palms Hotel; the following year he built the houseboat and stayed on that; the boat was built at Jacksonville and he tried to get it to Miami but the Canal was too small for the boat (3483-4); about April 24, 1924, their records show the houseboat was at Star Island, Miami Beach, and he was living on it; the next year the house was in course of construction and after it was completed, Green went there to live and continued to live there when he was in Miami and left there to go to Lake Placid, where he died (3486). Witness identified Fla. Ex. No. 2, showing that the houseboat "Colonel" was purchased in 1924 at a cost of $160,550.06 and was sold in 1934 for $5,000 (3487); also Fla. Ex. No. 3, which showed that the "Pioneer" houseboat was purchased in March, 1923, for $107,000 and sold in August, 1925, for $55,000 (3488-9); that the "Mabel G.", a cruising boat built in New York in 1925 cost $42,500, is still in Florida; that the "Isola Stella", purchased in February, 1928, for $29,000 is still in Florida (3489-90). Said Fla. Ex. No. 3 reads as follows:

"Name of Boat	Date Purchased	Cost	Date of Sale	Sale Price
Day Dream	9/11/19	$27,792.11	6/3/34	$10,000.00
Pioneer	3/20/23	107,000.00	8/5/25	55,000.00
Fuller	7/31/18	4,000.00	6/1924	1,500.00
Lydia	9/19/18	10,000.00	.....	.....
Moonahanas	7/31/18	1,500.00	7/1920	2,800.00
Ruth-Dana	3/1918	2,000.00	5/1920	300.00
Speedboat Mary	5/19/23	9,143.37	4/7/25	6,050.00
Spindrift	4/16/24	11,777.00	4/13/25	10,000.00
Mabel G	9/7/25	42,500.00	.....	.....
Friday	8/10/25	23,548.14	.....	.....
Shark	8/27/18	350.00	6/1920	90.00
Ocie	9/4/18	400.00	.....	.....
Marion	Scrapped			

"Name of Boat	Date Purchased	Cost	Date of Sale	Sale Price
Alaska-Antillies				
Hawaii-Philippines	2/2/17	19,500.00	1920	13,200.00
Isola Stella	2/21/28	29,000.00"		

(3491.)

On further cross-examination by counsel for Florida, the witness testified that Green's purchase of jewelry was a sort of hobby; he bought a great many articles from time to time as the result of solicitation from sellers; if he thought them bargains, he would buy regardless of where he was; he bought a lot in Texas, Florida and New York (3494); when he got through looking at them they would be put in safekeeping. The witness identified Fla. Ex. No. 4, a statement of expenditures made by Green in Florida from April 17, 1924 to December 24, 1932, showing the cost of the Star Island property to be $632,651.30, and the same was given in evidence (3496-99). Said Capital Account is as follows:

"Star Island Property, Capital Acct.

Date	Name	Amount
4/17/24	Lot #22—Star Island—Miami Ocean View Co.	$32,075.00
5/23/24	Burdine & Marco—Attorneys	7.60
6/23/24	" " " "	100.00
8/18/24	James Donn—Landscape	2,126.25
9/18/24	J. I. Conklin—Engineering	3,500.00
12/ 2/24	James Betteridge & Son—Builders	3,407.00
2/ 4/25	W. C. DeGarmo—Architect	272.56
3/ 3/25	Lots #21 & #46—Miami Ocean View Co.	120,000.00
"	Fee for recording Deed Miami Ocean View Co.	4.70
4/ 3/25	Continuation of Abstracts	8.25
4/18/25	J. H. Levi—Contractor	9,000.00
6/ 2/25	M. Hampton—Architect	2,880.00
7/ 8/25	John B. Orr—Contractor	6,230.74
9/ 4/25	" " " "	9,755.77
10/ 3/25	John B. Orr—Contractor	$6,469.32
11/ 4/25	" " " "	24,857.70
"	Domestic Light Co.	200.00
12/31/25	John B. Orr—Contractor	18,534.55
"	" " " "	8,136.88
2/ 2/26	Domestic Light Co.	795.00
3/ 5/26	John B. Orr—Contractor	21,622.44

Date	Name	Amount
3/ 5/26	Martin L. Hampton—Architect	2,220.00
3/10/36	John B. Orr—Contractor	18,801.58
3/11/26	Martin L. Hampton—Architect	1,482.44
3/20/26	Edward F. Caldwell & Co., Electric Fixtures	6,480.13
9/14/26	Raphael Studio Inc. Interior Decorators	11,970.75
10/ 8/26	" " " " "	14,346.03
11/11/26	" " " " "	31,782.03
12/ 7/26	" " " " "	29,075.14
1/ 8/27	" " " " "	37,034.64
1/17/27	" " " " "	8,923.54
2/18/27	" " " " "	29,082.46
2/25/27	L. Barth & Co. Hotel Equipment	63,899.83
3/23/27	Raphael Studio Inc. Interior Decorators	17,512.38
4/25/27	" " " " "	6,195.44
4/30/27	" " " " "	3,206.50
6/ 6/27	" " " " "	857.44
6/19/28	John B. Orr Inc. Contractor	4,675.00
7/ 5/28	" " " " "	5,525.00
7/17/28	" " " " "	4,845.00
8/ 2/28	John B. Orr Inc. Contractor	$5,355.00
8/17/28	" " " " "	5,950.00
8/27/28	" " " " "	8,500.00
9/17/28	" " " " "	10,530.00
11/23/28	" " " " "	6,085.00
11/26/28	" " " " "	1,131.90
6/ 4/28	" " " " 4/21/28 "	8,160.00
"	" " " " 5/ 5/28 "	5,185.00
"	" " " " 5/19/28 "	7,225.00
"	" " " "	6,630.00
		$632,651.30

Credits:

12/24/32	Baltimore American Ins. Co.	$127.13	
"	Union Assurance Co.	31.79	
"	Liverpool, London & Globe	211.89	
"	Providence Washington Co.	169.51	540.32
	Cost of Property		$632,110.98"

(3496-99.)

Witness also identified Fla. Ex. No. 5, a statement of annual expense at the Star Island property between 1924 and 1936, inclusive, amounting to $842,324.66 (3506-7)—the principal items shown on this Exhibit being a duplication of those in Fla. Ex. No. 4. Said statement was given in evidence and is as follows (3508-9):

"E. H. R. Green's Property, Miami Beach, Florida

Year	Expenses	Principal
1924	$364.21	$41,215.85
1925	45,363.26	206,350.47
1926	53,519.40	138,575.85
1927	80,541.40	166,712.23
1928	55,943.44	79,796.90
1929	55,244.12	
1930	95,933.45	
1931	95,445.30	
1932	144,542.85	540.32 Cr.
1933	32,143.28	
1934	76,426.83	
1935	68,896.09	
1936	37,961.03	
	$842,324.66	$632,110.98"

(3508-9)

The witness also identified Fla. Ex. No. 6, a statement of Green's personal investments in Florida other than his house, boats, etc., and further testified that Green owned 760 shares of the stock of the Bank of Bay of Biscayne and made a loan to that Bank of $100,000 and at another time a loan of $750,000 (3513-15, and 3519 and 3556). Said statement is as follows (3518-19):

"E. H. R. Green's Florida Interests

4/12/28	John Sewell & Brother Mortgage		$50,000.00
7/16/30	Charlotte E. French Mtg. $7,500.00 now		3,000.00
4/8/27	Fogal Dry Dock & Storage Co.	$38,000.00	
4/13/27	" " " " " "	62,000.00	
4/18/28	" " " " " "	15,000.00	
			$115,000.00
4/23/28	Maurice Van Weintraub Loan	$3,000.00	
6/13/28	" " " "	5,000.00	
8/30/29	" " " "	1,500.00	
		$9,500.00	

"E. H. R. Green's Florida Interests—Continued

4/22/29	Paid on Acct. Prin.				$1,200.00		
12/5/29	"	"	"	"	300.00		
2/8/30	"	"	"	"	300.00		
4/25/30	"	"	"	"	100.00		
5/7/30	"	"	"	"	100.00		
9/8/30	"	"	"	"	50.00		
12/2/30	"	"	"	"	50.00		
						$2,100.00	
	Advanced on Insurance Premiums					$7,400.00 2,403.65	
							$9,803.65
5/26/32	Morton Fogal Mtg. Loan						$16,000.00
4/9/28	Miami Beach First National Bank 100 shs						$27,500.00
4/9/28	First National Bank, Miami, Fla. 100 shs						$25,000.00
8/30/30	Bath Club Membership Ctf						1,500.00
12/1/32	Cocolobo Cay Club 2 shs						$4,000.00
8/30/30	Surf Hotel Corporation 10 shs V. T. Ctfs						3,000.00"

(3518-19.)

The witness further testified that Green's apartment at the Waldorf-Astoria was on the eighth floor and in the Sherry-Netherland on the twenty-fourth floor (3519-20); that Green had a new Lincoln automobile delivered to him at Miami in 1936 just before leaving for Lake Placid, which was sent to Lake Placid (3520-1).

Counsel for New York thereupon gave in evidence Exs. Nos. 81 to 84, regarding Green's occupation of an apartment at the Waldorf-Astoria and the charges therefor (3527-32).

In response to further questions by counsel for New York, witness testified that after the death of Colonel Green, Mrs. Green continued to live at Round Hills for about six months and when possession was taken by the Temporary Administrator she ceased to live there (3534); that Green did not dispose of his stamp collection and a large number of stamps were in New York in the Apartment House; that in most years his contributions to charity exceeded the 15% allowable deduction from income tax (3536); that if he had not made the contributions his taxes would have been larger; that he was in the bracket of from $300,000 to $600,000, it varied and the rates varied in different years (3537); that contributions of $2,500 to the Association of Stamp Exhibitions, Inc., and the Collectors Club in 1926 were personal items, and would not be reflected in the statement of New York contributions (3538); during the years 1935 and 1936, Green spent approximately $110,000 for stamps (3539).

N. Y. Ex. No. 85, dated July 15, 1935, from Green to Frederick A. Newman, Miami, Florida, was given in evidence, in

which he enclosed a check for $5,719.42 to cover the bill for stamps dated July 6, 1935 (3543).

Thereupon counsel for Texas gave in evidence Tex. Ex. No. 330, application by Green and license issued by Massachusetts for the transfer of a Benz automobile in 1926, in which it was stated under "Owner's Name and Address"—"Name—Col. E. H. R. Green, Street—Round Hills House; City—South Dartmouth, Mass." and his legal address "Terrell, Texas" (3546-8). Also as Tex. Ex. No. 331, a memorandum dated December 10, 1923, between Hetty Sylvia Ann Howland Green Wilks, of New York City, and Edward Howland Robinson Green, residence, "Terrell, Kaufman County, Texas," regarding the donation of $500,000 by them to Wellesley College (3550-1); also Tex. Ex. No. 332, a letter dated November 18, 1926, from Green to Miss Amelia H. Jones, of New Bedford, Massachusetts, in which he said, among other things (3552-4):

"I appreciate very much the sentiment expressed in your letter, but as I am really not a citizen of New Bedford and am called upon for the Community Funds in both Florida and Texas, where I have homes, and, furthermore, as the people in Florida have suffered as much or more than those in New Bedford, after careful consideration I do not feel that I can consistently increase my donation for New Bedford over that of last year. Therefore, I beg to enclose herewith my check No. 7271 on the Seaboard National Bank for $2,000.00, which was the amount of my 1925 donation" (3554).

The witness further testified, in response to questions by counsel for Texas, that Green's subscription to the First Liberty Loan of 1917-18 was made through the American National Bank at Terrell, Texas, and several in New York through different banks and organizations; that the New York subscriptions were about $3,000,000 or $3,500,000 and that made through the bank of Terrell, Texas was $5,000,000, of which about $4,500,000 was delivered (3555).

Upon further cross-examination by counsel for Massachusetts, the witness testified that vouchers for expenditures at the South Dartmouth house began to come in about 1917 and for the radio about two or three years prior to the formation of the Radio Corporation or about 1922; that of the boats listed on Fla. Ex. No. 3, the "Day Dream," "Ful-

ler," "Lydia", "Moonahanas," "Ruth Dana," "Shark," "Ocie," "Marion" and the four tenders for the yacht "United States" were in Massachusetts waters (3557-60); that the yacht "United States" was purchased in the Fall of 1916; went into commission in July, 1917, and she had to be brought through the Great Lakes; that the cost of the "United States" net was $794,450.66; that she was registered as having a home port at Galveston, Texas; was brought to New York waters, in the Summer of 1917, a trip made to Buzzards Bay, subsequently came back to New York waters, later was used for a trip to Galveston about December, 1917, and January, 1918, returned to New York waters and subsequently taken to South Dartmouth and kept there until she sank in Padanaram Harbor August, 1919 (3559-62).

Counsel for Florida gave in evidence Fla. Ex. No. 25, a list of contributions made by Green within the State of Florida Between February 21, 1925 and January 25, 1936 (3576-8). Said list is as follows:

"E. H. R. Green Payments Within State of Florida

Date	Name	Charged to Contributions	Charged to E. H. R. Green Personally
2/21/25	Community Church		$1,000.00
10/18/26	Miami Beach Chamber of Commerce		1,000.00
3/25/27	Miami Community Chest	$1,000.00	
9/17/27	Subscription to Chamber of Commerce Booklet		
11/19/27	Mahai Temple Shrine Convention Fund		300.00
2/ 1/28	Miami Beach Chamber of Commerce		1,000.00
2/21/28	Miami Community Chest		1,000.00
1/22/29	Miami Beach Chamber of Commerce	1,000.00	
2/ 1/29	Red Cross		1,000.00
4/ 1/29	Dade County Boy Scouts	1.00	
4/ 1/29	Community Chest	25.00	
4/ 1/29	L. Lawry Wall-Community Chest	500.00	
1/20/30	Committee of One Hundred	500.00	
1/23/30	Committee of One Hundred	500.00	
1/27/30	Junior League	125.00	
"	"	500.00	
1/28/30	Miami Beach Chamber of Commerce	20.00	
3/ 3/30	Community Church	1,000.00	
5/23/30	St. Patrick's Church	250.00	
5/27/30	Miami Jr. Chamber of Commerce	100.00	
12/24/30	Miami Empty Stocking Fund	3,000.00	
1/20/31	American Legion	500.00	
1/28/31	Miami Beach Chamber of Commerce	10.00	
2/ 6/31	Community Church	1,000.00	
5/ 6/31	Committee of One Hundred	250.00	
1/14/32	Temple of Israel Sisterhood	75.00	
1/20/32	Miami Beach Chamber of Commerce	10.00	
1/29/32	Florida Peace Officers Assn.	1,000.00	
2/ 3/32	National Council of Jewish Women	50.00	
2/ 4/32	Junior League	10.00	
2/ 4/32	Veteran Assn.	200.00	
2/ 5/32	Dade County Community Chest	2.00	
		250.00	

"E. H. R. Green Payments Within State of Florida--Continued

Date	Name	Charged to Contributions	Charged to E. H. R. Green Personally
3/ 4/32	Miami Beach Community Chest	$250.00	
4/ 1/32	Miami Unemployment Fund	15.00	
1/23/33	Miami Beach Chamber of Commerce	1,000.00	
2/28/33	Community Chest, Miami	1,000.00	
5/ 5/33	Jackson Memorial Hospital, Miami	5,000.00	
1/ 6/34	Veterans of Foreign Wars		$10.00
1/22/34	Miami Beach Chamber of Commerce		1,000.00
3/ 2/34	Miami Beach Welfare Assn.		4.00
3/17/34	Community Church	250.00	
3/11/34	Emunah Chapter O. E. S.		5.00
1/24/35	Miami Beach Chamber of Commerce		1,000.00
2/ 1/35	Community Church	250.00	
3/23/35	Saint Francis Hospital	100.00	
1/25/36	Miami Beach Chamber of Commerce	1,000.00	
		$20,743.00	$7,319.00"

(3576–78.)

Said witness further testified that an examination of his records show that Green gave up his polo box in New York City in the Spring of 1927 and that his records did not show any sales of stamps from his collection after he stopped purchasing (3581-2).

Ernest Temple Love, of New Jersey, testified that he was an Assistant Cashier of the Chase National Bank and had been since 1921; that the Seaboard National Bank changed its name to the Seaboard Bank and the latter was merged with the Equitable Trust Company and the Equitable Trust Company in turn merged with the Chase Bank; that the Equitable-Chase Merger occurred in 1930 and the other mergers preceded it by a few years; that the records of the Seaboard are in the custody of the Chase; that he had examined the records to ascertain the attendance of Green at meetings of the Board of Directors; that Green was elected a Director of the Seaboard July 7, 1910, and became a member of the Boards of the other institutions into which it was merged, and from an examination of the records from which on witness had prepared N. Y. Ex. No. 14, which contained a complete record of all meetings of the Seaboard National Bank, the Seaboard Bank and the Equitable Trust Company during the period that Green was a Director in those institutions and showed when he attended the meetings of the Board between July 14, 1910 and May 20, 1930 (3589-94). Said Exhibit was given in evidence and is set forth in the Record at pp. 3594-3626.

On cross-examination by counsel for Texas, the witness testified that this record showed that after 1921 Green did not attend any meetings of the Directors; that the last Directors' meeting he attended was October 20, 1921 (3629).

On cross-examination by counsel for Florida, the witness testified that his statement ran to 1930 and he did not examine the records between that date and 1936 when Green died (3630), but that Green was a Director of the Chase Bank during this latter period. Counsel stipulated that during that period from 1930 to 1936 Green attended no meetings (3630).

On redirect examination by counsel for New York, witness testified that Green was elected a member of the Board of the Chase National Bank as an incident to the merger with the Equitable (3633).

In response to counsel for Florida, witness said he had never seen Green in the Chase National Bank; that his office was on the ninth floor and the Directors' room on the fourth floor and unless he happens to be on the officers' elevator on the first floor he does not see them; that he did not know Green personally and does not recall ever having seen him (3633-4).

Lawrence Sturgis, of New Jersey, testified that for five years he was associated with the Secretary of the Board of Directors of the Irving Trust Company and in that capacity had access to all of the records and that he is now connected with the Secretary's office; that the Irving Trust Company is the successor of the Columbia Trust Company of the City of New York and became such February 7, 1923, through the merger; at that time it assumed the name Irving Bank-Columbia Trust Company; in 1926, there was a further merger and the institution's name became the American Exchange Irving Trust Company; in 1929, the name was changed to the present title—Irving Trust Company, which is in possession of the records of the Columbia Trust Company, including the minute book of the Board of Directors; that Green was a Director of the Columbia Trust Company from February 6, 1912 through 1919, was re-elected January 21, 1920, but did not qualify; that witness has examined the records and prepared a schedule showing the meetings of the Board and the attendance of Green during this

period; the Executive Committee, of which Green was not a member, held meetings at other times and he has examined the records of those meetings and prepared a schedule, N. Y. Ex. No. 15, which was given in evidence and is set forth in the Record at pp. 3641-46.

Witness further testified that he was connected with the Columbia Trust Company from March 15, 1918; that he did not know Green. On cross-examination by counsel for Massachusetts, witness said that according to N. Y. Ex. No. 15, the last meeting of the Board of Directors attended by Green was February 20, 1919, and the last meeting of the Executive Committee he attended was August 28, 1919 (3646-7).

William C. Cox, of New York City, testified that he was Vice President of the New York Produce Exchange Safe Deposit & Storage Company and started with the institution in 1927; that it has complete records through 1916; that Green was a Trusteee of the Company, elected May 5, 1914, and continued as such until his death (3650-1); that he was also a stockholder, owning thirteen shares acquired in 1914 and 1916; that his address given on the records when he acquired his stock was 7 West Ninetieth Street, New York City, and at the time the last shares were issued to him, it was 111 Broadway, New York City; that witness prepared from the records a statement showing the attendance of Green at meetings of the Board of Trustees from May 6, 1914 to January 9, 1918, since which latter date Green did not attend any meetings (3653). Said statement was given in evidence as N. Y. Ex. No. 16 (3654-8). Witness further testified that he did not know Green personally and has no recollection of ever having seen him (3658).

Saul Dubov, of New York City, testified that he was the Auditor of the Moorebilt Garage Company which runs the Commodore-Biltmore and had made a complete audit of the Garage from the time they commenced business and had prepared a ledger sheet from June, 1928 (the time when the Moorebilt Garage Company took over the Commodore-Biltmore) to June, 1933, the last date the Green cars were in; that the records of the prior Company were

not in their possession; that these records show Green kept in the Commodore-Biltmore Garage two Lincoln cars from June 30th, 1928 to June 30th, 1930 (3659-62); from July 1, 1930 to June 30, 1931, one car; for the period from June 30, 1931 to June 30, 1933, the records indicate he may have had one or two cars; during 1931, the car was in in June and December—two months; in 1932, the car was in three months—January, June and December; in 1933, in May and June (3664-5); that the type of service is known as full servicing, that is, cleaning, washing and storage—live storage, which means the car was ready for use at any time (3665); the numbers of the cars indicate New York licenses (3666).

Witness further testified that he did not know Green and had never seen him (3668). Phtotostats of the ledger sheets produced by witness were given in evidence as N. Y. Ex. No. 17 (3683-5).

L. M. De Vausney, of New Jersey, testified that he was connected with the Stock Exchange Firm of T. L. Watson and Company, New York City; was formerly with the Seaboard National Bank and was well acquainted with Green in a business way (3687-8); that he first met him at the Seaboard Bank in New York when witness was Assistant Cashier and later Vice President and Director; that the Bank was then located at 18 Broadway; that he met Green when he came in the Bank with Mr. E. M. Reardon, of the American Exchange National Bank of Dallas, Texas, their correspondent; the Seaboard later moved to 59 Broad Street; while at 18 Broadway, Green spent considerable time in the Bank; he would come in frequently during the week and stayed from ten minutes to two or three hours (3688-9); that Green became a Director about 1909 and remained through the consolidations and was a Director of the Chase Bank (3690); that when he was there he attended to any business he had to do and at 18 Broadway, he had a chair between the President's desk and that of one of the Vice President's—a rather large chair—and transacted business mostly with officers of the Bank, but people came in sometimes to sell him bonds (3691); that witness has visited Green at the Waldorf-Astoria and the Sherry-Netherland Apartments about business matters and also occasionally went to the baseball games with him

(3693 and 3697); that he also visited him at Round Hills and in riding around with him there one day he asked him what was to become of the place and his best impression is he said he intended it to go to the State of Massachusetts some time for a hospital or museum of some sort, but cannot give his exact words (3700 and 3711-13).

On cross-examination by counsel for Texas, witness testified that in the oath Green signed as Director, he gave "Terrell, Texas," as his residence (3703); that the last time he saw Green was in the Summer of 1930 or 1931 (3704); that he discontinued coming to the Bank about 1922 or 1923 and from then on was seldom, if ever, there; that witness made about a dozen trips to Round Hills (3705).

On cross-examination by counsel for Florida, the witness testified that he did not see Green more than a dozen times after 1920 or 1921; that witness would have to go where he was about certain transactions, but they were very few (3708).

On cross-examination by counsel for Massachusetts, the witness testified that the business Green transacted at the Bank was in connection with the investment and reinvestment of the securities of himself and his mother and the usual banking business connected therewith (3718).

Henry Stewart Price, of New York, testified that he was a member of the Technical Staff of the Bell Telephone Laboratories, Inc., of the City of New York; that he first met Green in the Summer of 1922, while witness was the engineer of the Western Electric Company assigned to the installation of certain broadcasting stations they were constructing at Round Hills, Massachusetts; he was engaged there from about the middle of July until some time in December, 1922, and constructed two stations (3722); in subsequent years when Green began broadcasting, usually about the 1st of July, witness was assigned to inspect the equipment and did that regularly for four years and on two other occasions until about 1926, the last visit; that he was friendly with Green and that the Colonel told him in a conversation about Round Hills that he intended it eventually to be some sort of a technical educational institution

(3723-5); that Green told him that the house was built with steel columns and beams similar to an office building which would permit the removal or relocation of entire walls or partitions; that this came up in discussing various methods of building construction relative to the new radio station building (3725); that there was some informal broadcasting from the small station from August, 1922, and the large station went into service the latter part of November or December, 1922, and broadcast during the Summer season —the periods of the Colonel's visits; that about 1926 or 1927, the broadcasting ceased and so far as witness knows the station has not been used since; that he saw Green a number of times in New York City and made one visit to Miami Beach about 1925 (3726-8); that Green called South Dartmouth his "Summer home" and his Florida home his "Winter home" (3728-9).

On cross-examination by counsel for Florida, the witness further testified that the Round Hills building contained a room equipped as a broadcasting studio adjacent to the radio transmitter room; that the large station operated continuously for two or three years; it was one of the first stations to take wire programs distributed from New York (3736); that the station was only operated during the Summer months and as the demand for wave lengths became larger, the Government could not spare a part-time assignment and both stations were closed (3737); when witness was there, there were two or three students from the Massachusetts Institute of Technology; Green allowed certain students to use the small station for experimental purposes (3738-9); that the house contained probably fifteen or twenty rooms but witness had only seen the first two floors; that Green said he intended to turn it over to the Massachusetts Institute of Technology (3740); when witness visited the Star Island home in 1925 or 1926, it was completed; he made two calls on the Colonel during one visit to Miami Beach (3741); it was a large, elaborate and beautiful home and one of the outstanding private residences in that section; the grounds had the appearance of a private park (3742); that witness did not see any radio stations there or anything other than would be found in a fine outstanding private residence; the grounds were beautifully decorated with shrubbery and the house elaborately furnished (3743); that he called upon Green in the Spring and Fall when he was in New York and visited Round Hills for two or three years about July

1st, when the radio stations were opened for the Summer before the licenses were terminated (3744).

On cross-examination by counsel for Massachusetts, the witness identified Mass. Ex. No. 48, "The Voice From Way Down East," which was published and widely distributed with Green's approval. The same was given in evidence and is set forth in the Record at pp. 3751-58. Counsel for Massachusetts read the following, among other extracts, from said publication:

"When the Mayflower landed at Plymouth on December 21, 1620, she had as cabinboy a lad named John Howland. Five years later, having come to man's estate, young Howland was allotted a tract of land on the west side of Buzzards Bay, running from the site of the present city of New Bedford to the open sea. At the southern end of this great tract was a rocky point whose two rounded hillocks were a landmark to sailors. Eventually this portion of the tract was known as Round Hills Farm, and as such it has remained within the Howland family continuously, its present owner being Edward Howland Robinson Green. Within recent years Colonel Green has established there his summer home 'Round Hills House.'

Colonel Green's interest in radio began in 1896. Learning of Marconi's transatlantic experiments, he attempted to adapt the new art to railroad use. Two baggage cars of the Texas Midland Railroad, of which he was President, were equipped with receiving sets and a sending set was installed at Terrell, Texas. The old metal-filings coherer was not satisfactory on a moving train but messages were handled for some months between two fixed stations eleven miles apart" (3760-61).

The witness stated that what had just been read was what had been stated to him in substance by Green (3761); he further testified that the pictures in this Exhibit were fair pictures of the buildings, equipment, etc.; that the direction finding equipment referred to in the brochure related to the equipment he purchased for locating the position of other radio stations, presumably ship stations (3762-69); that Green had a vital interest in this enterprise and had considerable scientific knowledge, followed the installation of the equipment, not only the broadcasting but the scientific aspect of it (3772).

Mass. Ex. No. 49, as well as the agreement made by Green as President of the Round Hills Radio Corporation June 8, 1922, for radio telephone transmitting apparatus was given in evidence (3774-80). In response to questions by counsel for New York, witness further testified that Green remained at Round Hills until December, 1922, because he was interested in seeing this radio station completed (3784).

N. Y. Ex. No. 18, a letter from the Round Hills Radio Corporation, dated June 30, 1923, enclosing a program for July 3rd and 4th to be broadcast from New York City was given in evidence (3786).

Dr. Henry S. Pascal, of New York City, testified that he had known Green since 1921 (4126); had treated his mother and also had treated Mrs. Stafford, then living with the Greens at the Waldorf-Astoria Hotel (4127). Witness identified the history record of Green made November 6, 1921, N. Y. Exs. Nos. 32 and 32-A for identification (4129-30), and testified that Green then resided at the Waldorf-Astoria in New York City; that his general condition was then pretty good but he complained of stiffness of the right knee; upon further examination, witness found he was suffering from extreme anemia, due to bleeding from the rectum and had a marked condition of infected teeth; the heart and lungs were normal (4133); he had lost his left leg, which was amputated when he was about twenty-one years old, following a swelling of the knee subsequent to an accident when he was coasting at the age of seventeen; that he had gone around just the same and kept hurting the knee off and on until two years after the accident when a boy jumped on his back playing leap frog and from that time on he had to wear a knee brace, when he was in Fordham University in the Bronx, New York City, and about a year later, when he was twenty-one, Dr. McBurney amputated his leg above the knee (4134-5); that after a blood urine laboratory examination, witness diagnosed Green's condition as traumatic arthritis, caused partially by sepsis from the teeth and bleeding from the rectum, which lowered his resistence and the trauma was due to the fact that every morning before putting on his artificial leg he would hop around on his other leg and being a heavy man, weighing 250 or 260 pounds, it jarred the knee and

aggravated his condition causing the arthritis; on November 22nd, witness operated and gave him a transfusion at the Waldorf-Astoria, assisted by Dr. Unger (4137-8); about two years later, January 29, 1923, he sent Green to St. Elizabeth's Hospital in New York City for an operation; meanwhile, he had all of his teeth removed following the examination in 1921 (4139); between the first visit and the time he went to the hospital, witness saw him about fourteen times at the Waldorf-Astoria; after the operation at the hospital all bleeding stopped and his general condition improved somewhat; about February 12, 1923, witness gave him another transfusion (4143-4); he saw him frequently from May 19th to June 29th, 1923, then again from November 15th to December 26th of that year and in between used to correspond with him and give him advice; he saw him again June 20th and December 30th, 1924 (4145); his relationship with Green was very friendly; when witness had the time he would spend hours in the evening talking with him; he was very interesting to talk to; witness became his family physician (4147); about August 17, 1925, he received a hurry call from Round Hills, Massachusetts and three days later gave Green a transfusion and saw him there several times (4147-8); saw him again five times in June, 1927, at the Waldorf-Astoria, New York; did not see him in 1928 or 1929 but on July 29, 1930, witness had another hurry call from Round Hills and on July 31 again gave him a transfusion; from July 29th to October 5th, witness made fourteen calls at Round Hills (4151); saw him at the Sherry-Netherland in 1932 and had a hurry call to Round Hills September 15, 1932; his heart was then very bad; saw him several times in September and October and sent him to Lake Placid (4151); that Green told him he hated to leave his old home at the Waldorf-Astoria—he considered it his home for so many years (4152); on November 6, 1921, witness's office was in the old Navare on Fifty-Eighth Street, New York City, and Green walked up a flight of stairs into witness' apartment; Green had a stamp collection at the Waldorf-Astoria and spent most of his time on it; he had three or four large safes or vaults where he kept his collection, working on it almost all day and night; that was his hobby (4152); at the Sherry-Netherland his apartment comprised the whole twenty-fourth floor—one wing was Mrs. Green's and the other was

Green's, which commanded a view of Central Park; witness saw the same safes he had seen at the Waldorf-Astoria at the Sherry-Netherland (4153); at the Sherry-Netherland, he was also interested in stamps and discussed them with witness (4153); when witness was called to Round Hills, he was there all of the time and saw Green three or four times a day; saw him at Lake Placid in October, November and December, 1932, at the Lake Placid Inn; saw him again in New York in January, 1933, nearly every day from the 1st to the 19th (4155); from January to June, witness corresponded with him at Miami and Lake Placid regarding his health; Green did not discuss his Massachusetts place particularly; witness saw the general character of the grounds, his activities there, etc.; witness sent him to Asheville, North Carolina, where he remained from November 5 to July 10, 1930, but he did not like it there and in subsequent years witness sent him to Lake Placid, which he preferred; the last time he saw him was June 30th, 1933, in New York at the Sherry-Netherland (4156-8); from 1921 on Green's health got worse every year from his habit of taking drugs of which witness did not approve (4158).

On cross-examination by counsel for Texas, witness testified that when he first saw Green in 1921, notwithstanding his apparent disabilities, his physical condition was such that he could have lived until ninety if he had taken care of it (4160); from 1921 to June 30, 1933, there was a general decline owing to his arthritic condition, which got worse; the anemic condition also pulled him down (4160); witness advised a change to a warm climate whenever possible and told him it might do him good in Florida, but also recommended to him Asheville, North Carolina and Lake Placid, New York (4162).

On cross-examination by counsel for Florida, witness testified that he did not know anything about Green's whereabouts or condition between 1933 and the time of his death (4164); that in the years when he was attending him, cold, wet, damp weather did not do him much good and that is why he took him away from Round Hills in the Fall of the year to a climate that was not so damp; Round Hills was damp, cold and piercing and witness advised him to go to a drier, even if cold, climate and referred him to Lake Placid or Asheville (4165-69); that he responded to his treatment when he got off the drugs that harmed him

(4165); in the earlier years of witness' attendance Green walked around with difficulty but in the latter years he was in a wheelchair, but attended to considerable business; witness first saw him in the wheelchair in June, 1933, the last time he saw him (4166).

On cross-examination by counsel for Massachusetts, witness testified that if Green went from South Dartmouth to Asheville, North Carolina, about November 5, 1930, it was under witness' advice; in 1932, from September 15th to October 12th, witness saw him at South Dartmouth and as the result of his condition advised him to leave South Dartmouth and go to Lake Placid (4168); on January 17, 1923, he operated on Green at the St. Elizabeth's Hospital and gave him a blood transfusion February 12th, and if he went to Miami, Florida, in March of that year, it was by his advice (4169); there was nothing in his condition to have prevented him from going to Texas had he so desired, any more than anywhere else; witness never advised him not to go to Texas (4170); the acute attacks when witness was called in in a hurry, as he had testified, were due to acetanilid poisoning induced by excessive use of bromo-seltzer (4170); in 1921, when he first saw him, the bleeding and absorption of septic poisoning from his teeth, in addition to his other habits, had reduced his resistance, but he had a wonderfully strong heart, good lungs and kidneys, which are the essentials of a man in good health (4170); the "other habits" might be termed "high living"—he told witness he had been a pretty lively boy in his younger days (4171); the first heart complaint witness found was September 15, 1932; he had myocarditis—a weakening of the heart muscle (4172).

On cross-examination by counsel for Mrs. Wilks, witness testified that he had advised Green to keep out of the dampness of the Massachusetts climate in the late Fall and early Winter; he never advised him about it in the earlier years because he did not consider it did him as much harm as in later years, when he became very stiff (4177).

On further examination, witness said that Green went to Miami the first time by his advice in March, 1923, after the transfusion in February of that year; that he had been in New York that Winter up to that time (4182-3).

N. Y. Ex. No. 32, Dr. Pascal's record of Green, was then identified by the witness and given in evidence (4187).

CHARLES J. WALLACE, of Port Chester, New York, testified that he was Manager of the Corn Exchange Bank, the Ninety-First Street and Broadway Branch; was employed by the Bank in 1910, which was then at Ninety-Second and Columbus Avenue (4191-2); that Green had an account there and identified his signature card, N. Y. Ex. No. 33, account dated August 23, 1911, giving his address—111 Broadway, New York City, showing the account was closed April 27, 1929, about the time it was absorbed by the Bank of the United States (4194); also identified N. Y. Ex. No. 34, signature card of Mrs. E. H. R. Green at the Colonial Bank, Eighty-First and Columbus Avenue, dated July 25, 1917, address, care of Westminster Company, 111 Broadway, New York City, and on the back "Address, 5 West Ninetieth Street," as well as "111 Broadway," showing account transferred from Mabel E. Harlow. Also identified N. Y. Ex. No. 35, signature card of Miss Mabel E. Harlow for the Colonial Bank, Columbus Avenue and Ninety-Second Street, New York City, giving the address on the reverse side, 5 West Ninetieth Street (4201-2).

HENRY F. WOELFLE, of New York City, testified that he had been Tower Apartment Manager of the Waldorf-Astoria now located at Fiftieth Street and Park Avenue from 1932, was Assistant Manager between 1929 and 1932 and before that had been employed at the old Waldorf-Astoria at Thirty-Fourth Street and Fifth Avenue, New York City, since his eighteenth year (4208-11); that he knew Green when he lived at the old Waldorf; that Mrs. Green, Mrs. Stafford and some others lived in the apartment with him; that his apartment was on the eighth floor; he had five or six rooms, in the same corner with the suite of the proprietor, Mr. George Bolt, and faced South and East (4212); witness was at the Sherry-Netherland as Assistant Manager when Green moved there in 1929 and identified N. Y. Ex. No. 36, registration card of Green at the Sherry-Netherland showing his arrival May 1, 1929,—Apartment, 24 Tower; Rate $27,000 per year (4215-16-17).

On cross-examination by counsel for Texas, witness testified that on this occasion Green asked him to register for him as "Colonel and Mrs. Green, City" (4220).

On cross-examination by counsel for Massachusetts, the witness identified Mass. Ex. No. 50, dated March 14, 1931, addressed to Green, signed J. O. Voit, Manager, Sherry-Netherland, regarding the occupation of the apartment on a monthly basis of $2250 a month after the expiration of the lease April 30, 1931, and the same was given in evidence (4223).

Mass. Exs. Nos. 51 and 52, relating to the same subject were also given in evidence (4228-29).

On cross-examination by counsel for Florida, the witness further testified that when Green and Mrs. Green were occupying this apartment, they were given the regular hotel service as guests—hotel service went with the apartment (4232).

On redirect examination by counsel for New York, witness testified that there were no facilities for cooking meals, the apartment was only equipped with a serving pantry (4232); that the Sherry-Netherland is one of the finest Hotel Apartments in New York of its type; that 60% of the guests are there on a permanent basis—people live there by the year and make it their residence (4233); that on May 1, 1929, when Green came there to live, rentals for hotel apartments were high, after that prices went down (4233-4). In response to questions by counsel for Florida, the witness further testified that he left the Sherry-Netherland around 1931 and that Green and Mrs. Green were there approximately a month in the Spring and a month in the Fall while he was there (4235-6).

William K. Cleverley, of Brooklyn, New York, testified that from 1883 until he retired in 1931 he was connected with the Seaboard and Chase National Banks, starting as messenger with the Seaboard and becoming First Vice President; that he first met Green about 1908 or 1910 in Dallas, Texas, at the American Exchange National Bank, which was a correspondent of the Seaboard (4244-6); witness made his headquarters at the Bank and met Green, who was generally around there; that he had a box at the ball game and invited him to go with him; he usually found him sitting in President Reardon's office, talking with people as they came in and out; later he saw him in New York when he became a Director of the Seaboard about

1910 (4247-9); Green had a chair there next to witness—he would come and go about as he did at the Dallas Bank; witness went to a few ball games with him in New York; he had a box at the Polo Grounds (4250); Green was a very heavy man and had a chair especially built for him at the Bank; he refused to have a desk when he came there; the understanding was he was to make their institution his headquarters; his chair was located between that of the witness and the President (4251); when in town he was generally in the Bank; he had no connection with it outside of the Directorship; he made purchases of securities through the Bank; the accounts of Green and his mother were substantial, running into millions of dollars at times (4254); Green had a box at the theater in Dallas and also attended shows frequently in New York (4254-5); he continued to use his chair at the Bank from the time he became a Director until he was taken sick, when he began to drop off coming; some days he would stay five minutes and then another day he would stay all day (4256); witness was Secretary of the Board of Directors of the Seaboard and Green attended pretty regularly (4257); witness had never been to Round Hills but on one occasion Green mentioned that he had not made up his mind as to what to do with the Round Hills house when he got through with it but that it was so constructed it could be turned into an institution—a hospital—and he referred to the fact that the elevator was large enough to wheel a patient in on a stretcher (4260).

On cross-examination by counsel for Texas, witness testified that during the time he was Secretary of the Board they happened to have a number of non-resident Directors; by the law, they were limited to 25% within 50 miles of New York (4261 and 4263).

On cross-examination by counsel for Florida, witness said he did not know whether Green was classed as a resident or non-resident Director (4263).

On cross-examination by counsel for Massachusetts, he testified that after Green's injury in 1921, he stopped attending Directors' meetings and when he visited the Bank he frequently called for some one to come out to his car at the curb (4265-6).

On cross-examination by counsel for Mrs. Wilks, witness stated that after 1910 he met Green in Texas about May,

when he was attending Directors' meetings of the Bank at Terrell, the Murray Company at Dallas, or the American Exchange National Bank and the Texas Midland Railroad (4267-8).

Louis P. Lengeman, of New York City, testified that he was a Clerk in the Department of Taxes and Assessments, New York City, and had made an examination of the records of his Department to determine whether an assessment for personal property for the year 1917 had been made against Green and found that a tentative value assessment had been made and afterwards cancelled; that the records of affidavits and statements prior to 1919 were all destroyed (4278-9).

On cross-examination by counsel for Massachusetts, witness said that from an examination of Tex. Exs. Nos. 77 and 78, affidavits made in November, 1916, in which Green said he was a non-resident of New York, indicated that was the reason the assessment was cancelled (4282).

Lawson Purdy, of New York City, testified that he was President of the Department of Taxes and Assessments of the City of New York, which had charge of all personal property assessments, from December, 1906 to January 1, 1918 (4284-5).

Witness explained the method of assessing and cancelling assessments then in effect (4286-4290), and stated that persons who were assessed and wanted the assessment cancelled or reduced appeared before the Commissioners or one of the Assistants and made statements under oath; in some cases, affidavits were presented in lieu of personal attendance (4289-90).

After examining Tex. Exs. Nos. 32 and 33, he further testified that if they had been presented to his Department by a reputable attorney he would have considered them sufficient to vacate the assessment of personal property made against the Estate of Hetty H. R. Green or against Colonel Green (4291).

William R. Wiener, of Woodhaven, New York, testified that he was Chief Clerk of the Bureau of Motor Vehicles,

Department of Taxation and Finance of the State of New York and had been connected with the administration of the Motor Vehicle Law since September 16, 1910; that the registration numbers for the year 1932—37,786-87-88 were issued at the same time (4299-4300).

James P. Flynn, of Stewart Manor, New York, testified that he was the Assistant Treasurer of the Central Hanover Safe Deposit Company and also employed by the Central Hanover Bank and Trust Company. He identified N. Y. Ex. No. 88, a photostat copy of a contract card for safe No. 2173, rented by Mrs. E. H. R. Green in the vault of the Central Union Safe Deposit Company and the same was given in evidence (4302). The card was dated May 6, 1929, bears the signature "Mrs. E. H. R. Green" and residence "Sherry-Netherland" and recites "Surrendered 1935."

Thomas T. Sturgis, Jr., of Scarborough, New York, testified that he was in charge of the safe deposit vault of the Irving Trust Company, Fifth Avenue Branch, the successor to the Knickerbocker Safe Deposit Company, which was successor to the Columbia Trust Company and has the records of the Knickerbocker. He identified N. Y. Ex. No. 89, a photostat copy of contract card covering rental of safe No. 363 by Mrs. Mabel H. Green June 12, 1918, surrendered May 6, 1929, with the Knickerbocker Trust Company and the same was given in evidence (4309). Said card showed upon its face "Pass Word: Terrell, Address: Waldorf-Astoria, N. Y. C. Business: Bills to 111 Broadway, N. Y. C." (4310), also "Date Taken: June 12, 1918," and names as deputies "E. H. R. Green, Mary C. Stafford (Mrs. T. S.)" (4311).

Peter John Anton Van der Putten, of Ocean Grove, New Jersey, testified that he had known Green since 1915 or 1916 and decorated his yacht "United States" at the dry dock at Brooklyn, New York; that in connection with this work he called on Green at 5 West Ninetieth Street (4319-21), where he was living with Miss Harlow and the

servants; it was scantily furnished; there were some nice pieces there, especially one beautiful clock; that the decoration of the "United States" occupied eight months and subsequently Green consulted him about the furnishing of Round Hills (4322); he did the decoration of Round Hills and had to go to the architect's office daily about the specifications (4323); witness did not like the woodwork because it looked very much like an institution, it was four feet high all around the downstairs rooms like in an institution; when he mentioned this to Green, he said, "You know when I am finished with it, I am going to give it to the City of New Bedford for an old women's home" (4324); the house was to have been finished in six months and witness' furniture, carpet and draperies were finished but could not be taken to it because the house took one year and eight months to complete (4326); it was well furnished; witness had a small truck full of furniture shipped from 5 West Ninetieth Street—the two clocks and private things of the Colonel; the furniture was too ordinary to be used, but he took a lot of pictures (4327); witness supplied the electric fixtures and asked Green why he had so many outlets which he did not need and he said, "Well, Van, I told you I would make it an old woman's home and if they want to build rooms they need outlets and all they have to do is to put up partitions and they can find the outlets on the blueprints" (4328); after the first year he occupied Round Hills, witness asked him, "How is it that you stay there so little" and he replied, "That is all I want; if I stay there too long I may have to pay taxes;" Green referred to it as his Summer home lots of times; after the large house was built, one evening Green told him Mrs. Green did not care to live in the big house and would rather like to have a small place and at Salters Point there is a high knoll and on that high knoll he intended to build another place for Mrs. Green, a ten room house (4329).

On cross examination by counsel for Florida, witness testified that he completed the decoration of Round Hills about June 21, 1921, and Green occupied it immediately; that the woodwork was the kind you can find in any old women's home—in any institution; witness spoke to Green about it many times; if he was mad, he would say, "Leave me alone, this is an old woman's home anyway" (4332); that it was about a year after he went into the big house that he spoke of building a small house for Mrs. Green; when witness

criticised the ceiling outlets Green said, "It belongs to the old ladies' home; if they want to put other walls up all they have to do is look at the blueprint and start hammering on the wall, make an outlet there and put electric fixtures through" (4333-4). On cross-examination by counsel for Massachusetts, witness identified Mass. Ex. No. 63, a letter from witness to Green, dated June 5, 1921, regarding instructions given the trucks to be at 5 West Ninetieth Street, and testified that he supervised the removal of the furniture and took everything from the old house that he thought was suitable for the Massachusetts place (4337-8). He also identified his receipt for the final payment of the contract price amounting to $154,500 and stated that he had an unsettled claim for $18,000 for extras and expenses incurred while waiting for the house to be finished (4339). The same was given in evidence as Mass. Ex. No. 64.

Photographs of Round Hills, twenty-three in number, were identified by the witness and given in evidence as Mass. Exs. Nos. 65-A to V (4352).

On cross-examination by counsel for Mrs. Wilks, witness testified that he had been an interior decorator for many years; that the Round Hills house was furnished by him under the direction of Green as a gentleman's home and was not in any sense an old ladies' home (4354).

Ralph H. Howes, of New York City, testified that he was the contractor who built the Round Hills house and was President of the R. H. Howes Construction Company, the Corporation that had the contract; that his office was in New York City; that they had figured on a number of buildings for Alfred Bossom, the architect, among others, Colonel Green's house; they were the successful bidders and were awarded the contract; the house was built during 1919 and 1920 (4356-7). Witness identified the plans and specifications, N. Y. Exs. Nos. 91, 91-A and 91-B, and same were given in evidence (4358-60).

Further testifying, the witness said that the building is what is known as a fireproof building, it has steel frame, reinforced concrete floors, fireproof partitions, has an exterior of cut granite backed up by brick walls; a solid roof laid on a concrete underbedding, wood-finished floors, hung ceilings on the first and second floors and basement, wains-

coating in some of the principal rooms, and a large number of bathrooms with tile walls and floors (4360); the house was built in accordance with plans and at every point on the plans where there is a circle with a period in it, it indicates a concealed electric outlet, the purpose of which is to put them back of the hung ceiling and plaster so that at a future date they may be used and save the expense of running wires and conduits to that particular place; there were many concealed outlets on each of the three floors, as well as concealed ceiling outlets on the second floor plan, and a number of concealed base outlets on each of the floors, the latter to enable a connection to be made at that point in the room without damage or additional expense; that witness had never run across the same situation before or since and considered the number of outlets that were not concealed adequate for the purpose of using the building as a residence (4362-3); that he asked the architect why in a building of this sort so much money was spent in putting in these outlets which were apparently no use to the present occupant and were far beyond what was usual in a first-class residence, and was told that the reason they were put there was because it was the intention of the owner to use the building as a public institution after he lived in it a while (4364); that Green often referred to the building as a Summer residence or cottage (4366).

On cross-examination by counsel for Texas, the witness testified that the partitions between the rooms are of gypsum block, plastered on both sides—"the same sort of construction you would have in this hotel or any other fireproof building" (4367-8); it is permanently constructed at the time but all sorts of changes can be made in it without affecting the structural portions of the building; it is something like an office building or apartment, has steel frame carrying the walls and floors, but you do not look for structural strength in the partition; it is an unusual type for a gentleman's residence (4368); it is more like a public building than a residence; it could be adapted to ready use as a public building; that according to the blueprints, there are about twice as many blind outlets, both ceiling and otherwise, as open ones (4369).

On cross-examination by counsel for Florida, witness testified that when awarded the contract, the plans and specifications were given to him by Mr. Bossom, the architect; that it was unnecessary to talk to Green because the

uniform architect's contract specifically states that the contractor receives his information from the architect and the architect's interpretation of the plans and specifications (4370); that he checked the outlets up with the architect, who said, "These outlets are in because Colonel Green wanted to have it made out that way and we cannot take them out;" witness asked "Why," and the architect replied, "Because this building is designed so as it may be used for another purpose—as an institution building," so we put them in (4372); that the construction of partitions with gypsum block lends itself readily to readjusting the room or putting in more rooms throughout the building without interfering with the uprights which carry the weight (4373).

On cross-examination by counsel for Mrs. Wilks, witness testified that he did not get the feeling at any time that it was being built as a home; there was no personal atmosphere connected with it in any way. Witness admitted that N. Y. Exs. Nos. 91, 91-A and 91-B all contained the legend, "Residence, Colonel E. H. R. Green, South Dartmouth, Massachusetts," and from the point of view of the builder it was completed as a private residence (4376). On redirect examination by counsel for New York, witness testified that the house was completed in accordance with the plans and specifications, that Green had an unusual understanding of electricity; that he has seldom known a man who was not a professional engineer who was so well acquainted not only with the theoretical but the practical side of electricity as Green (4377).

On cross-examination by counsel for Massachusetts, witness testified that he was also familiar with many details of construction but did not seem to have the same understanding of other branches as of electricity; that over $150,000 was spent in the exterior stone work and he did not seem to realize the processes that had to be gone through with to cut and fit the stone and set it in the building (4377).

N. Y. Ex. No. 92, an itemized list of the contents of the Sherry-Netherland apartment was given in evidence (4380). Also N. Y. Ex. No. 93, affidavit of the Secretary of the Texas and New Orleans Railroad, May 3, 1937, stating that Green received no salary from the Texas Midland Railroad (4381-2).

Also N. Y. Ex. No. 94, affidavit of the Secretary of the same Company, dated April 30, 1937, as Custodian of the records of the Texas Midland Railroad Company, that from 1893 to 1928, all of the outstanding stock of said Railroad, excepting one share standing in the name of E. H. R. Green and six Directors, stood in the name of Hetty Green or the Westminster Company (4386-8).

RALPH H. HOWES being recalled, further testified on direct examination by counsel for New York that N. Y. Ex. No. 90, the plans of the Round Hills house, showed that the building was about 275 to 300 feet long and 50 to 60 feet in depth; that they excavated the whole area, built the foundation walls, put in the concrete floors, set the columns up and left in this large area a space which was divided into a series of rooms, one of which was the organ chamber; that there is also an elevator well, elevator machinery room, organ, motor chamber room, two boiler rooms, coal and wood storage rooms, many fireplaces, transformer rooms, valet's dressing rooms, vegetable cellar, wine cellar, and two storage rooms, all indicated on the plans; that the side walls were plastered with waterproof cement and the concrete ceiling floor laid above it; that the cellar extended under the entire house and it would have been possible to arrange sleeping quarters in the basement without trouble; there are many windows shown on areas that would give you light and on one side the building fell away somewhat; you could put sleeping rooms in the basement or cellar and could rearrange and put the kitchen and dining room in the cellar, also treatment rooms of various sorts might be put there; that the unfinished space could be rearranged and used for many purposes and some of the present rooms could be used for other purposes; that the third floor is divided into eighteen or nineteen rooms known as servants' quarters and storage space; that the cedar or storage room is 15' x 22' and there is a bedroom 23' x 22' on that floor; in the wing portion, there is a large unfinished area not divided by partitions into rooms; there are many outside windows; there are three large bathrooms, one maid's bath that has three lavatories and a man's bath that also has three lavatories, in both cases they have in addition the

tubs and the toilets; that there are many soil and waste lines coming up, vent lines coming up from the floors below that could be used for other plumbing connections, if so desired; that the plumbing work was carefully laid out and the best of material used; they used brass pipe for the hot and cold water line at a time when it was not necessary to do so even in the best of houses; that N. Y. Ex. No. 91-B is the basement electric plan which shows many extra concealed outlets in the basement—several times more concealed outlets than were intended for active immediate use (4389-91).

Thereupon counsel for New York gave in evidence the following Exhibits:

N. Y. Ex. No. 95, letter from Green, dated January 24, 1913, to Dr. E. P. Wilmot, Austin, Texas, explaining the pressure of business in New York prevented him from attending the Governor's Inaugural Ceremonies (4393).

N. Y. Ex. No. 96, Birth Certificate of Green from the General Register Office, Somerset House, London, Marylebone Registration District, reading:

"1868 Birth in the Sub-District of Cavendish Square, in the County of Middlesex.

No. 52

When and Where Born: Twenty-second August 1868, at The Langham Hotel.

Name, if any: Edward Howland Robinson

Sex: Boy.

Name and Surname of Father: Edward Henry Green.

Name and Surname of Mother: Hetty Howland Green, formerly Robinson.

Rank or Profession of Father: Merchant.

Signature, Description and Residence of Informant: Edward H. Green, father, Langham Hotel, Portland Place, Marylebone.

When Registered: Twenty-sixth August 1868.

Signature of Registrar: Wm. Tookey, Registrar."

(4396-7.)

N. Y. Ex. No. 97, letter dated November 20, 1918, signed by Green as President of the Texas Midland Railroad Company, to C. R. Gray, Director, Division of Operation, United States Railroad Administration, Washington, D. C., listing

the Directors for whom annual transportation was requested, among others, "E. H. R. Green, New York City," also officers of the Company, among others, "E. H. R. Green, President, New York to Terrell, Texas,—New York address: 111 Broadway; Terrell address, temporarily, American National Bank" (4401).

N. Y. Ex. No. 98, copy of agreement dated October 18, 1923, between Green and Sarah A. Nolan, for the sale of certain land and buildings at Roxbury, Massachusetts (4402-5).

N. Y. Ex. No. 99, agreement made August 10, 1925, between Green, "of New York, N. Y.," and the Fogal Boat Yard of Miami, Florida, for a Diesel Tug to be delivered at Miami, Florida (4410).

N. Y. Ex. No. 100, contract made August 6, 1925, between the Consolidated Shipbuilding Corporation of New York City and Colonel Green, of 115 Broadway, New York City, for a Speedway Cruiser (4415).

N. Y. Ex. No. 1[illegible], bill of Dr. Unger, dated December 1, 1921, for blood transfusion (4417).

Thomas W. Chrystie, recalled, testified that Mrs. Green lived at Round Hills until December 8, 1936, and then moved away; that after his appointment as Massachusetts Administrator he made an examination of the old Howland house at Round Hills in which Green's ancestors were reputed to have lived; it was not in good repair and he had the roof reshingled and other improvements made; the wall paper and plaster were in poor condition (4406-8).

John W. Schlabitz, of New Rochelle, New York, testified that he was an architect formerly connected with Alfred C. Bossom in charge of various jobs from 1916 to 1921, getting up the working drawings and specifications, among others, the house at South Dartmouth for Colonel Green, and supervised most of the detail work in connection with that building, and met Green (4423-5); that the architect told him it was to be designed as an institution at a later date (4425). Witness identified plans of the Round Hills house, N. Y. Ex. No. 90 (4425), and testified that under the architect's

direction he started to design the house at the second floor; that all bedrooms were to be approximately twenty feet square, with a hall in the center, so that in the future the partitions could be taken out in the center; forming wards on the second floor: that is the way the plans were laid out (4426); that the building was constructed with columns in the center and any wall taken out would not affect the structure; they were terra cotta and the blocks could be knocked out with a sledge hammer, forming large rooms at either end (4427); that the walls in between these rooms were built in such a way that the various small rooms could be converted into pantries, scullcries, private baths, etc., for future wards—smaller wards in the *middle with* private rooms on the side; that this would make wards 20' x 47' on either end (4427); the bathrooms were located in between the bedrooms but were so designed that they could be converted into private baths, scullcries or pantries by knocking out the partitions; that some concealed plumbing lines were capped up in the walls so as to introduce pantry sinks, scullery sinks or anything pertaining to an institution or hospital: that they began with the design of the second floor and this made the building so long that it made tremendous rooms on the first floor, a living room 50 feet long, a tremendous dining room, a number of dens, Chinese room, etc. (4428); the third floor, as witness remembers, was to be left open for future bedrooms; that the architect told him that the building had to be a granite building made to look like a big institution; according to the original design, there was to be a wainscoating in the various rooms 4 or 5 feet above the floor, the elevator was to be big enough to wheel a cot or wheelchair into it (4430).

Anne Owens, of New York City, testified that she was the Executive Housekeeper of the Sherry-Netherland Hotel and had been Assistant Housekeeper at the old Waldorf-Astoria and knew Green when he lived there (4431-2); that Green selected the pieces of furniture he wanted moved to the Sherry-Netherland for his apartment—an old brass bed, chest of drawers, night table and some chairs for his office or living room and some draperies to be taken to the Sherry-Netherland, where he had the entire twenty-fourth floor (4434-5). Witness identified N. Y. Ex. No. 162 as an architectural drawing of the Sherry-Netherland apartment

(4436-7) and stated that in Green's suite was the dining room, also used as the secretary's office, a big living room and terrace, an entrance hall, bedrooms, servants' quarters, pantry and two elevators; that Green's living room overlooked Central Park and there was a large terrace which he used sometimes for sunning; that they brought up the furniture and draperies used by Green in the Waldorf; that Mrs. Green used the Sherry-Netherland furniture and brought a few personal pictures, etc.; they also brought up some framed money which hung on the wall, some maps and original Government grants which were hung in his study (4439-41); they also brought up a music cabinet and a large radio for Mrs. Green; that Green was not very anxious to move, although it was necessary but he thought that going there with the people that had been at the old Waldorf would make him feel more at home and that is the reason he wanted to take some of the atmosphere of the old Waldorf with him to the Sherry-Netherland (4441-2).

On cross-examination by counsel for Massachusetts, witness testified that the furniture that Green selected to be taken from the Waldorf to the Sherry-Netherland was all Waldorf furniture which they purchased for him; this did not include his desk and chairs; that the twenty-fourth floor was the floor of the tower and not the floor of the building (4446-48 and 4450).

Counsel for New York then offered in evidence the following Exhibits:

N. Y. Ex. No. 103, letter from Green, dated March 15, 1929, to the Manager of the Hotel Plaza, New York City, in which he stated:

"I have been advised that my old home, the Waldorf-Astoria has been sold and that we are expected to vacate by May 1st, at which time all the furnishings in the hotel are to go on sale; * * *

I am now looking for a suite of rooms consisting of three bedrooms, with baths, a parlor and a large room in which I can place some fireproof safes containing my stamp collection, etc."

and requesting a floor plan to be addressed to him at 46 Star Island, Miami Beach, Florida (4452).

N. Y. Exs. Nos. 104 to 108, copies of letters written by Green in 1929 relating to his removal from the Waldorf-Astoria (4454-60).

N. Y. Exs. Nos. 109 to 111, correspondence showing Green's removal to the Sherry-Netherland (4463). In Ex. No. 110, dated October 15, 1929, addressed to Henry C. Coke, Dallas, Texas, he said, "My New York address now is Sherry-Netherland Hotel, 5th Avenue and 59th Street" (4465), and in Ex. No. 111, dated June 19, 1930, addressed to said Coke, he said:

"We have been having exceptionally hot weather here this summer and I am just getting ready to go to my country place at South Dartmouth, where I hope it is going to be cooler than here in New York. It is just as hot in New York this summer, if not hotter, than in Texas" (4468).

N. Y. Exs. Nos. 112, 113, 114, 115 and 116, letters relating to the movements of Green (4469-77).

N. Y. Ex. No. 118, letter from Green, dated December 18, 1925, to B. H. Anthony, of The New Bedford Standard, New Bedford, Massachusetts, introducing Tom C. Gooch, Vice President and Editor of the Dallas Times-Herald, in which he referred to Dallas as "my old home town" (4486).

N. Y. Ex. No. 119, photostat copy of letter dated October 22, 1920, on letterhead of Crapo, Clifford & Prescott, New Bedford, Massachusetts, addressed to Green and signed by Oliver Prescott (4493). (In this letter he suggests a contribution to the Social Agencies of New Bedford and South Dartmouth. Mass. Ex. No. 59-A shows a contribution on October 23, 1920, to the Community Welfare Fund of New Bedford for $1500 (R. 4504).

N. Y. Ex. No. 120, a letter dated July 6, 1923, and Ex. No. 121, dated October 29, 1923, in which Green refers to his "Summer residence" at Round Hills (4496-4502 and 4515).

N. Y. Ex. No. 122, letter from Green's secretary, dated January 29, 1931, which refers to Round Hills as his "Summer home." (4503).

N. Y. Exs. Nos. 123 and 124, correspondence of June, 1926, with the New Bedford Broadcasting Company (4506), relating to the loan of Green's portable radio set for use in the celebration at New Bedford on July 5th, in which Green said:

"It will be impossible to accommodate you, as we cannot now get the equipment ready by the date desired (July

5th). Our electrical men will not be at Round Hills before July 1st" (4508).

N. Y. Ex. No. 125, photostat of a letter dated South Dartmouth, Massachusetts, November 17, 1924, to Adolph Skibsted, Round Hills House, Green's chef, in which it is stated, "The season here is closed for the winter, etc." (4517); N. Y. Ex. No. 126, a circular letter of recommendation for Skibsted from Green at 111 Broadway, New York City, dated November 17, 1924, in which he said, "He again entered my employ in July, 1921, as Chef in Round Hills House, my summer residence, where he has been until this date" (4518-19).

N. Y. Ex. No. 127, a photostat copy of letter dated November 17, 1934, from Green's secretary to the Sales Manager of the Schick Dry Shaver, Inc., Stamford, Connecticut, in which he said, "We are here at Colonel Green's summer home, but will be leaving shortly for Miami Beach, where we will spend the winter" (4521).

N. Y. Ex. No. 128, photostat copy of letter from Green, Falls Hotel, Marlin, Texas, June 13, 1935, to Dr. C. Frederic Roche, Glen Springs, Watkins Glen, New York, in which he said, "We have been here four weeks and two days and are leaving next Sunday, the 16th, at 2:32 A. M. for my summer home at South Dartmouth, Massachusetts" (4525-6).

N. Y. Ex. No. 129, photostat copy of letter dated Waldorf-Astoria, New York City, December 16, 1924, to Mrs. Alfred C. Bossom, stating, "Upon my return to the city from Round Hills I find the gift you so kindly sent me, etc." (4527).

N. Y. Exs. Nos. 130 to 137, relating to miscellaneous matters. In Ex. No. 131, letter dated April 2, 1927, to his sister, Mrs. Wilks, he said:

"I expect to leave Miami Beach on April 15th for Marlin, Texas, and will spend a month there taking the baths. From a letter I received from Dr. Buie today, I expect to return to New York the latter part of May in such condition that you will not know your brother Ned as you last saw at the Waldorf. I believe my visit to Florida has improved my health" (4538).

In Ex. No. 132, photostat copy of letter dated October 30, 1927, from Mrs. Wilks to Green, she says, "I hope you will

not stay at Round Hills so late that you get stiff so you can not enjoy yourself when you come to New York" (4539-40). Ex. No. 134, photostat copy of a letter dated February 25, 1928, from Green to his sister enclosing a copy of the order of the Interstate Commerce Commission in regard to the sale of the Texas Midland Railroad (4546). In Ex. No. 135, photostat copy of letter dated Marlin, Texas, April 2, 1922, addressed to E. R. Duff, Round Hills House, South Dartmouth, Massachusetts, regarding the installation of wireless telephones there, Green says:

"We will only need the service from June until December where we use the switchboard, like all the rest of the people in that locality who have telephones installed for the summer period" (4548-50).

Ex. No. 136, photostat copy of letter from Green, dated Marlin, Texas, April 17, 1922, to said Duff, his steward at Round Hills, returning a letter from the New England Telephone Company (4552-4). Ex. No. 137, photostat copy of letter from Duff to Green, Waldorf-Astoria Hotel, New York City, dated Round Hills House, South Dartmouth, Massachusetts, May 8, 1923, in which he says:

"I trust that you arrived back home feeling in the very best of health * * *.

Everything seems to be going along very nicely here, and we are getting everything in readiness for the coming summer * * *.

I suppose you will pay us a visit as soon as you get rested up from your trip" (4557).

N. Y. Ex. No. 138, photostat copy of letter from Green to the A. H. Grebe & Co., Inc., dated August 15, 1922, relating to the purchase of radio apparatus for Round Hills, in which he says:

"If you have a set that will accomplish something unusual or that is not possible with other sets, we would also like to add that to our collection, as it is our desire to make our display as attractive as possible. Inasmuch as the season here lasts for the next two months only, we will appreciate it very much if you will forward to us at the earliest moment possible whatever set or sets you think it advisable for us to have" (4559-61).

N. Y. Ex. No. 139, photostat copy of letter from Green to Crazy Well Company, Mineral Wells, Texas, September 27, 1916, cancelling an order for water to be sent to his residence, 5 West Ninetieth Street, New York City (4562).

N. Y. Ex. No. 140, photostat of letter from Green to the Crazy Well Company, Mineral Wells, Texas, dated March 5, 1917, referring to the preceding letter (4564-5).

N. Y. Ex. No. 141, photostat of Western Union telegram from Miami Beach, Florida, February 5, 1930, to Dr. N. D. Buie, at New York City, reading:

"I have wired the two gentlemen you have referred to as follows 'For many years I have been going to Marlin, Texas, to receive the benefit of the wonderful water they have I want to personally urge the Government to designate Marlin as a Veteran Hospital City so that others may receive the same benefits' If there is anything more I can do I shall be glad to do it" (4567-8).

N. Y. Exs. Nos. 142, 143 and 144, photostats of Western Union telegrams to Green March 28, 1929, from Armstrong Perry regarding a vacancy in the Federal Radio Commission. In Ex. No. 144, March 28, 1929, Green telegraphed:

"As I spend only summer months in New England and being a rabid Republican, having served eight years as Republican National Committeeman from Texas, I would not be available for appointment on Federal Radio Commission, etc." (4571-4574).

N. Y. Ex. No. 145, photostat of letter to Green, November 7, 1911, from W. P. Allen, Terrell, Texas, in which he said:

"There is never a day that passes but what we all think of you and the good that you did to this country while you were a resident here" (4578-9).

N. Y. Ex. No. 146, photostat of letter from Green to said Allen November 13, 1918, in which he said:

"If you are not having any socialist meetings at your front door in which the policemen are tearing down the red flags, I may have to come down and live with you after a while" (4579-80).

N. Y. Ex. No. 147, photostat copy of letter from said Allen to Green November 14, 1918, in which he said:

"Hope you found Mrs. Green in good health when you returned home and I know you are both as much elated at the ending of the war as we are here" (4583-4).

N. Y. Ex. No. 148, photostat of letter from said Allen to Green, New York City, June 4, 1919, in which he said:

"I trust that you had a pleasant trip home and as I notice money is eleven percent in New York yesterday I presume you are doing well" (4585-6).

N. Y. Ex. No. 149, photostat of letter from said Allen to Green, New York City, November 4, 1921, in which he says:

"I was on my way to Dallas to see you yesterday when I learned that you had decided to go back.

I certainly hope you will not be very sick, and that you will be able to finish your visit before Christmas.

* * * * * * *

I am enclosing the poll tax receipts which I trust you will find in order" (4587-8).

N. Y. Ex. No. 150, photostat of letter to said Allen signed by Mabel H. Green, dated January 19, 1925, enclosing her poll tax to be charged to Colonel Green and stating:

"Colonel Green is well and enjoying Florida weather. It is very warm here. I had rather be in New York. I do not like hot weather, etc." (4591-2).

(See statements of counsel regarding admission of declarations made by Mrs. Green as bearing upon the question of Colonel Green's domicile) (4589-91).

N. Y. Ex. No. 151, photostat of letter from Green, Sherry-Netherland Hotel, June 25, 1929, to said Allen, acknowledging receipt of an electric razor, etc. (4593-4).

N. Y. Ex. No. 152, photostat of letter from Green to said Allen, dated March 6, 1931, in which he says:

"As you know, I am always glad to see you, but at the present time I am trying to make up my mind just where to go. I have found that this year Florida is not the proper place for a fellow in my condition to remain. We have had nothing but cold spells and bad weather ever since we arrived. However, judging from the looks of the weather

bureau, it has been about the same all over the country. I am trying to see what part of the country is going to make a break for better weather" (4596).

N. Y. Ex. No. 153, photostat of letter from said Allen, Terrell, Texas, to Green, dated October 6, 1931, acknowledging the receipt of a box of cranberries, in which he says:

"I have not seen you for more than two years, and as it looks like you will not come to Texas any more, I would like to have one more long chat with you before my time comes" (4598-4600).

Photostats of certain correspondence between Green and his mother in 1908 and 1909, N. Y. Exs. Nos. 154 to 156 (4601, et seq.) and N. Y. Ex. No. 157, being a photostat copy of a postal card postmarked San Francisco, California, dated December 10, 1915, from Green to his mother, 7 West Ninetieth Street, New York, reading, "Meeting over Will leave Sunday for home Everything all right so far" (4613).

N. Y. Ex. No. 158, photostat of Western Union telegram from Miami Beach, May 4, 1934, Green to Mrs. Charles W. Pierson, reading: "It is with profound regret that I have just learned of the passing of Mr. Pierson, my business associate and close personal friend for many years" (4614-15).

N. Y. Ex. No. 159, photostat of letter from Green to Charles W. Pierson, dated December 28, 1931, regarding land grants received in towns along the Texas Midland Railroad, in which he says: "Those lands are unsaleable today" (4616-17).

N. Y. Exs. Nos. 160 to 170, miscellaneous photostats of correspondence with Green (4620). Ex. No. 160, photostat of letter from W. P. Allen, dated November 11, 1924, asking whether he should pay poll taxes for himself and Mrs. Green (4620-21), and further stating:

"While you know we would all hate to see you move your official residence from the State of Texas where it has been so long, at the same time we have a new Inheritance Tax law that would hit your Estate pretty hard, (I think it runs as high as 25%). We have so far gotten by without an income Tax but the last legislature tried to pass it.

I don't think they will pass an income law under the present administration but you can never tell. As you spend quite a lot of time in Florida, I thought you might

want this information, so please write me what to do about paying the Poll Taxes for this year" (4621).

In Ex. No. 161, photostat of letter from Green, South Dartmouth, Massachusetts, November 15, 1924, to said Allen, in which he said:

"When is the latest day before the next election a person can pay his poll tax? As suggested in your letter of November 11th, I am going to look into the Florida matter. Please let me know about this" (4623).

In Ex. No. 162, photostat of letter to Green November 18, 1924, from Allen, in which he said:

"I am in receipt of your letter of Nov. 15th, and replying to same will say that we have until Jan. 31st, 1925 in which we can pay poll taxes before they become delinquent. I will wait your further instructions in this matter, until you have looked more fully into the Florida matter.

I think I sent you a copy of the latest Texas law when it was passed, however, for fear that I didn't I am ordering another today, which I will forward to you.

I am very sorry indeed to learn that your joints are stiffening up again. I am afraid that you are staying in the cold climate too long, and ought to have been down here in Texas or Florida before this time" (4625-26).

In Ex. No. 163, photostat of letter from said Allen to Green January 17, 1931, he says:

"For many years past you have held your residence in Terrell, Texas, paid your income Taxes in Texas, and I have been paying your poll Taxes for you.

The State only requires a poll tax payment for those 60 years of age or younger, so now you are not assessed a poll tax, although they would accept it if I were to tender it.

The Legislature is now in session, and judging from Press reports I think that they are going to pass an income Tax law for Texas this year, and as this will cost you a lot of money, I was wondering if you still wanted to maintain your residence here.

With the present laws in Florida as I understand them relative to the Income Tax, I thought possibly that you might want to change as I sincerely believe that it will save

you a lot of money while you live and several millions on Inheritance Tax.

It may be presumptive on my part to write you this, but with this Texas law staring us in the face I thought it my duty to tell you. So if you want me to tender your poll Tax please write me by return mail, as Jan. 31st, is the last date to pay them" (4628-29).

In No. 164, photostat of letter from Green, Star Island, Miami Beach, Florida, to Charles W. Pierson, New York City, January 20, 1931, reading:

"I enclose herewith a letter from Mr. W. P. Allen of Terrell, Texas, which is self explanatory.

The writer of the letter is a very close friend of mine and is in with the administration in Texas. I am a director of his bank and have been his friend through a great many hard times, and whatever he has said has always been pretty near right. I am telling you this for your guidance in reading the letter. Please tell Mr. Potter to wire Mr. Allen if you think I had better continue to pay my poll tax in Texas" (4631).

Ex. No. 165, photostat of letter from said Pierson to Green January 22, 1931, reading (4633-35):

"I have your letter of January 20 enclosing letter of January 17 from Mr. W. P. Allen of Terrell, Texas.

As Texas only requires a poll tax payment for those sixty years of age or younger, it seems unnecessary to pay a poll tax for the current year.

The question of a possible change of legal residence is one I should like to consider a little more before expressing an opinion. Of course, there is such a thing as jumping out of the frying pan into the fire. If you have not answered your friend Mr. Allen's letter I suggest that when you do you inquire whether he can give you any idea as to when the new income tax law is likely to go into effect. Have you heard from any of your acquaintances who have changed their legal residence to Florida what their experiences under the local tax laws have been or what new taxing legislation is contemplated? I don't suppose any attempt is made at present to tax residents on their holdings of State and municipal bonds of other States but there is nothing in the law to prevent a State from doing this if it sees fit. In

other words, while the United States Government canno tax New York State bonds the State of Florida could if i wanted to.

I will be considering the matter carefully from various angles and shall expect to write you again about it before long" (4634-35).

Ex. No. 166, photostat of letter from said Pierson to Green, South Dartmouth, Massachusetts, November 9, 1931, reading (4636-38):

"Mr. Potter tells me that your tax bill from Florida includes an item of poll tax and asks whether this should be paid.

I had some correspondence with you in January and February last about changing your legal residence from Texas to Florida. My impression is that you decided to do nothing about it for the present as the Texas Legislature adjourned without enacting an income tax law. However, I should like to be sure about this before advising about the Florida poll tax. If you have decided to change your legal residence at this time I think the poll tax should be paid; if not, I think it should not be paid and that a record should be made that it is not paid because you are not a legal resident of the State.

Won't you drop me a line telling me what, if anything, was done about a change of legal residence when the matter was up last winter and spring and what your present feeling is on the subject. I shall be glad to hear from you in the course of the next few days as Mr. Potter tells me there is a four per cent discount if the Florida State and County property taxes are paid during November" (4637-8).

Ex. No. 167, photostat of letter from Green, South Dartmouth, Massachusetts, to said Pierson, November 10, 1931, reading (4640-42):

"In answer to your letter of November 9th, in regard to the Florida poll tax, will say that all I remember is that I sent on to you a letter from Mr. W. P. Allen, saying they were going to get after us about an income and inheritance tax in Texas, but, as I understand it, the matter died of a natural death in the Legislature and, therefore, nothing was done.

Florida today is in about the same shape as the United States is in selling their Treasury Notes—they are hunting around in every way possible to increase taxes to meet the obligations of all the little towns that have not, as well as the ones that have, defaulted on their interest. I think the great trouble with Florida is going to be the personal tax. No poll taxes were paid last year in Florida. The only place a poll tax was paid last year was in Texas. I have no sentiment as to where my legal residence shall be. Every State I know of is trying to increase its taxes in some way. I don't see any benefit at the present time in making a move, unless you do. It looks to me as though we were going to get an increased tax in any State, or the United States" (4641-42).

Ex. No. 168, photostat of letter from Green to said Pierson February 1, 1933, reading (4643-45):

"I quote below an extract from a letter I have just received from Mr. W. P. Allen, President of the American National Bank of Terrell, Texas, dated January 28th, 1933:

'For the last few years I have been keeping you informed as to the taxation laws in Texas and I have thought for some time it would be best for you to move your official residence to the State of Florida and file your Federal Income Tax Return there.

The Present Legislature now in session is going to pass a very drastic Income Tax Law and if you file your Federal Income Tax Return in Texas and claim this as your residence, you will have to file State Income Tax Return here also and it may run into large figures.

I believe, much as we appreciate having you as a citizen of this State, that in order to save this large amount of money each year, to say nothing of Inheritance Tax, you should change your residence to the State of Florida, where they have no Income or Inheritance Tax. I am only writing this so that you may be informed, as I believe it my duty to do so'" (4644-45).

Ex. No. 169, photostat of letter from Green to W. P. Allen, Terrell, Texas, February 14, 1933, reading (4646):

"In connection with your letter regarding a proposed change in my legal residence from Texas to Florida, I enclose herewith copy of a letter I have just received from Mr. Charles W. Pierson, my attorney in New York.

If, as suggested by Mr. Pierson, you will keep me
by telegraph of the progress of the proposed incon
legislation in Texas I shall be very much obliged to
(4646).

Ex. No. 170, photostat of letter from Pierson to
Miami Beach, Florida, February 9, 1933, reading (465

"I have yours of February 1, quoting from a lett
ceived from Mr. W. P. Allen, in which he says that the
legislature now in session is going to pass a very d
income tax law and advises that you change your resi
from Texas to Florida.

Unless you contemplate going back to Texas to live
time (and I suppose you do not) it seems hardly worth
to keep the Texas domicile if that is going to involve ma
returns and paying an income tax to Texas on your e
income derived from sources without the State as we
within it. Rather than do this I should be inclined to giv
the Texas domicile and change your legal residenc
Florida. I say this although, as you will recall
previous letters and conversations on the subject, I am
particularly enthusiastic about Florida as a legal resid
on account of the danger of oppressive personal taxes.
Florida statute enacted in 1931 imposes a tax of two
on the dollar of taxable value of stocks and bonds a
presume the rate may be raised some day. Just how burd
some such a tax would be would depend largely on how
law is administered and what valuations are adopted.
statut-s provides that:

Intangible personal property shall be assessed in
county where the taxpayer resides or has his usual domic

and that:

The taxable value of all intangible personal prope
which is assessed on said tax roll shall be on the same ba
of valuation as is used for the assessment for taxation
real or personal property.

Perhaps some of your friends who have taken up leg
residence in Florida can tell you how these provisions ha
been applied as a practical matter in their own cases.

As I wrote you when the question was up two years ag
in law a change of legal residence involves two element
—first, actual presence in the new residence and, secon
intent to make the change. As you are actually living

Florida now, you are in a position to make the change of legal residence by simply making up your mind to do it—forming the intent. The important thing would be to be able to prove the intent and when it was formed.

My suggestion is that you arrange with Mr. Allen or some other reliable friend in Texas to keep you posted by telegraph as to the progress of the proposed tax legislation and that if and when it becomes certain that an income tax law will be enacted, you—

Write a letter to your office here stating that you have changed your legal residence to Florida and directing that all papers be drawn accordingly and that your Federal income tax return for 1932 (if not already filed) be filed in the Florida District;

Write a letter to the Texas Midland and any other Texas corporation in which you are an officer or director, stating that you have changed your legal residence to Florida and requesting that their records and future publications be amended accordingly;

Register as a voter in Florida at the earliest opportunity;

See that you are listed as a resident of Florida in your automobile license and any other papers you may have occasion to sign" (4650-53).

Ex. No. 171, photostat of letter from Green to Social Register Association, New York City, December 29, 1927, regarding a subscription, and Ex. No. 172, photostat of letter to said Association May 21, 1929, signed by Mrs. Green, in which she states (4655-58):

"The names of Col. Edward Howland R. Green and myself should appear as in former issues, with the addition of our winter home, which is 46 Star Island, Miami Beach, Florida" (4658).

Photostat copies of pages from the Social Register, New York City, for 1911 to 1934 and the Summer Social Register, New York, 1921 to 1927 and 1929, as N. Y. Exs. Nos. 173 to 202 (4659), indicating Green's residence in Winter and Summer in the years mentioned.

N. Y. Exs. Nos. 206 to 209, certain photographs of the Green burial plot and monument in the cemetery in Bellows Falls, Vermont (4767).

N. Y. Ex. No. 210, photograph of the Round Hills House, and Exs. Nos. 211 to 213 relating to the broadcasting station at Round Hills (4773-81).

N. Y. Exs. Nos. 214 to 217, relating to miscellaneous matters of minor importance (4783-90).

William B. Hogan, of New York, testified that he was Assessor for the Department of Taxes and Assessments, New York City, and had been for 22 years; in former years he had the block from Central Park West, in Ninetieth Street, in 1917 or 1918, that Ninetieth Street was then exclusively a private house block running from Central Park west to Columbus Avenue; the larger apartments were not there; there was one garage in the block about 100 or 150 feet west of Central Park West on the south side of the street; according to his recollection, there was nothing to indicate boarding houses; it was a high class residential neighborhood (4489).

William C. Phillips, of New Bedford, Massachusetts, testified that he was Assistant Cashier of the First National Bank of New Bedford and identified N. Y. Exs. Nos. 221 and 222, signature cards of Green, dated August 2, 1918 and August 2, 1911, showing "Permanent Address, 111 Broadway, N. Y." from the records of the Bank formerly the Mechanics Bank of New Bedford (4795-4800).

William H. Tripp, of New Bedford, Massachusetts, Curator of the old Dartmouth Historical Society and Whaling Museum of the City of New Bedford, testified that he became acquainted with Green in 1924 and knew him until the time of his death; in January, 1933, he called upon him at the Sherry-Netherland, New York City, as Secretary of the New Bedford Port Society, and asked him to become the first subscriber to a tablet to Captain George Fred Tilton, formerly in his employ in charge of the "Charles W. Morgan;" he found him in his office, sitting at his desk, wrapped up in a blanket; around the sides of the room were green filing cases and on the table postage stamps, coins and magnifying glasses (4801-04).

On cross-examination by counsel for Texas, the witness said he had several conversations with Green about his residence and on one occasion he told him his address was Terrell, Texas; spoke of it as being the center of two railroads and told about the moving picture people borrowing two locomotives to make a moving picture of a crash between two locomotives (4805); Green asked him to act as Assistant Treasurer for Whaling Enshrined which he did until the funds were exhausted; during this time it was customary for the Directors of Whaling Enshrined to hold their meetings on the deck of the "Charles W. Morgan" on the birthday anniversary of the ship, July 21st, and as long as Green was able to do so he attended; after he failed in health and it was not easy for him to get around, they were held on the dock alongside the ship; during this period he was never what might be called a well man; he did not engage in any of the social life of New Bedford (4805-6).

At the request of counsel for New York, it was conceded that Hjordis Ullestad was employed by Green at one time as nurse (4806).

Clifton W. Bartlett, of New Bedford, Massachusetts, testified that he was acquainted with Green and called on him in a social way and talked with him on various subjects; on one occasion he said that the people around this District were not very favorably impressed with his mother and she hoped that he would come here and build a monument for her on the Round Hills property; he said that was her wish expressed to him (4807, 4809). On cross-examination by counsel for Massachusetts, the witness testified that his son married one of the protegées of Green—Miss Cammack, and she visited the Colonel, which led to their acquaintance; that witness and his wife took dinner with Colonel and Mrs. Green at South Dartmouth three or four times each season during their stay there and he has met at his table several other prominent residents of New Bedford and young ladies visiting with the Greens (4812-13).

Charles A. Parker, of New Bedford, testified that he had been a newspaper man 38 years and is a Special Feature Writer for several papers and at present is connected with

the Boston Traveler; that he knew Green and interviewed him on various occasions (4818-19); in the month of October, 1925, he interviewed him and wrote an article for the Boston Traveler October 17, 1925; Green was in his electric car on the Round Hills Estate carrying on a conversation with various farmers on the farm and giving some attention to stamps which he had received in an envelope that morning (4820); he had a board or table arranged in the automobile upon which he was working; they were obviously stamps of some value; he remarked that the house some distance away was too large for a dwelling and that he had talked with his sister in regard to it and they felt that they would leave the house as a museum or give it to the City as a playground for the public (4821); that he spoke of the number of people visiting the place, saying he had 20,000 in an unusual day and that 1800 to 2000 visitors were coming there on Sundays and holidays at the time witness was talking with him the month of October (4822).

On cross-examination by counsel for Florida, he said that this article which was in the paper was the result of this conversation with Green and that the quotation there is a quotation from him—

"The house here is too large for a dwelling, said Colonel Green, and our plan is eventually to have it transferred into a public museum or else into a home of some character, but neither I nor my sister has reached a decision as to what form the endowment will take, but we both agree that steps should be taken whereby the estate may be left as a memorial for public use" (4824).

JOHN M. BULLARD, of New Bedford, testified that Sol-e-Mar, an institution for crippled children, lying north of Round Hills, was built in 1923 (4825).

At the hearings at Miami Beach, Florida, April, 1938, counsel for New York gave in evidence, as N. Y. Ex. No. 224, page 98 of the testimony of Colonel Green from the record in the Hetty Green Estate Tax proceeding in the New York Courts, regarding the burial plot at Bellows Falls, Vermont, where his mother, father and grandfather were buried (7694-5); also from his testimony at page 140 of the same record regarding the occupation of premises 7

West Ninetieth Street as an office (7696); also the following exhibits:

N. Y. Ex. No. 225, Inventory of the Estate of Hetty Green, sworn to by Colonel Green, as acting Executor and Trustee under her Will, January 21, 1920, showing an aggregate estate of $67,385,447.59 (7702-5).

N. Y. Ex. No. 226, letter from Green to Claude A. Renshaw, April 30, 1931 (7706), in which he said:

"I am in receipt of your letter of April 29th and thank you very much for the interest you are taking in my Star Island home. When we leave we are always particular about locking up securely everything of value on the place. A caretaker is always left in charge and, in addition, we have a private watchman on duty every night who is deputized as a special officer by Chief Glenn. My permanent address is 111 Broadway, Room 1104, New York City, through which I can be reached immediately at any time."

No. 227, letter from Green, Sherry-Netherland, New York, June 3, 1932, to B. J. Glenn, Chief of Police, Miami Beach, containing the same paragraph as in the letter to Renshaw (7708).

No. 228, letter to Green, New York City, April 18, 1929, from Maurice Van Weintraub, Tampa, Florida, in which he says (7710):

"I hope you arrived feeling O. K. and that by this time you are located in your new home."

No. 229, United States license for the yacht "Friday," of Miami, Florida, issued to Green, 111 Broadway, New York City, by the Comptroller of Customs, Miami, Florida, January 11, 1933 (7211).

No. 230, index of enrollments of the "Colonel," March 3, 1930—Managing Owner, E. H. R. Green, 111 Broadway, New York, Home—New York, etc. (7719).

No. 231, index of license of the "Friday," of Miami, Florida, January 11, 1933,—Managing Owner, Green, 111 Broadway, New York; Morton Fogal, Agent, Miami, Florida (7722).

No. 232, letter from Green to W. A. Philpott, Jr., Dallas, Texas, April 14, 1930, regarding the first sheet of the $5.00

currency of the First National Bank of Dallas, in which he says (7726-28):

"Should I ever have a chance to visit Terrell or Dallas, it will give me pleasure to advise you, so we may have a friendly chat. With kind regards to our friend Max Mehl, from whom I have bought a great many coins and paper money, I remain."

No. 233, summary of Green's interest in Government and Municipal securities as of June 8, 1936, by States, aggregating $14,460,672.45 (7732-34).

No. 234, blueprint of set of plans of the first and second floors of the Star Island house (7737-9).

Hubert D. Bliss, of Hornell, New York, testified that he resided in New Bedford, Massachusetts, from April, 1920 to April, 1925; while there he was a reporter on the Evening Standard (7740-1); that he was assigned to interview Colonel Green in the month of July, 1924, and saw him at the Round Hills mansion; Green told him of the activities there, and their research work, which was the subject of the interview (7743); witness asked him about his political fortunes and Green said, "Oh, you mean my contest for the national committeeman's post in Texas—that was just something drummed up by my old political cronies in Texas—they seemed to get a lot of satisfaction out of it"; that Green said it would be impossible for him to be national committeeman from Texas—"Why, my home is in New York State, my legal home and nothing would be gained from a delegate outside their own State" (7746); that he further talked about the young girls that he and Mrs. Green were educating, about the gift that he and his sister made to Wellesley College and made several references to his mother; that he talked about Texas and referred to the days that he had spent there in which he had done an appreciable amount of railroading; his references were as though that was something that had passed by; that all of his references were general (7747-48).

On cross-examination by counsel for Texas, witness testified that he was assigned to get an interview from Green about the early stages of television and they discussed

things generally; that he did not tell him about his residence in Texas or his interest there (7761), or about his house in Florida, but told him about cruising to Florida—they were houseboating days with him rather than Miami residence days (7763); that witness did not know anything about his purchases on Star Island in 1924 or his visits to Marlin, Texas (7767), nor can he recall that he made anything but a general reference to running for Governor of Texas as a Republican candidate (7770).

On redirect examination by counsel for New York, he said the article published contained the substance of his interview (7781).

HARRY NEYLAND, recalled by counsel for New York, testified that he saw the Round Hills house under construction on several occasions and saw a stone with Green's name or initials on it; it was an Old English type of writing—written rather than printed letter—raised above the background; the stone was carved away from the lettering; it was there on the job with other stones; that in 1924, witness made a design for a bronze tablet which was to go on the rock or some place to hold the memorial when the "Charles W. Morgan" was to be presented to the City of New Bedford; when New Bedford rejected it and Green became interested, witness showed him the sketch which he had changed from the original one, showing Green's name on the tablet; in discussing with him where the ship was to be placed, Green said, "Neyland, if we have the ship down on property which originally belonged to Mother, on the Estate, I do not want to have my name on the tablet, but if we put the ship on property which I myself have purchased, I will permit my name to be used." He further said, quoting Colonel Green as near as it is possible to me, to my understanding and belief of his exact words: "Unbeknown to me, in my absence, workmen carved my name on stone which they intended to place on the Round Hills House; I had that removed, because I did not wish my name to appear upon property owned by my mother or my ancestors" (7784). Green further said, "If that had been my mother's name, or possibly the name of some of my other ancestors, it would be all right; I would have permitted it to remain"; he said that Round Hills was con-

structed for other purposes than a home; he was using it until he had developed Round Hills for a memorial which he had intended to build for his mother and his ancestors; he always showed a great deal of reverence for his mother (7784-5); that in addition to the tablet for his mother, he said that when that was completed he wanted to have another tablet for Isaac Howland, Jr. and Edward Mott Robinson and those were all the names which he wanted to use (7786).

Witness identified Tex. Ex. No. 24 as a picture of the tablet which was under discussion, which he executed and is now on the rock alongside the ship at Round Hills, Massachusetts (7787). A photograph produced by the witness of the rock, showing Colonel Green, was given in evidence as N. Y. Ex. No. 235.

On cross-examination by counsel for Florida, the witness testified that the lettering was obliterated from this stone by Green's direction; witness does not know where the stone was placed but it was intended to be placed in the front of the portico at the entrance to the building (7791); that the lettering was obliterated or changed because Green said he did not mean to use this as a home (7792).

Edward Ardolino, of Metuchen, New Jersey, testified that he was an architectural sculptor and President of the Edward Ardolino, Inc., with offices in New York City, and had done work on the Fields Museum, Cathedral of St. John the Divine, Massachusetts State House, Archives Building in Washington and many other buildings (7798-9); that he did the work on the Round Hills house and had a conversation with Colonel Green in the presence of Mr. Zinn, the representative of the architect, Mr. Bossom, at the main entrance to the building; that Green told him he wanted the work around the main entrance and the decoration of the apex to be bolder than it was because it was intended for an institution and they went to work until they made it bolder as he wished to have it (7800); previous to the execution in stone, they made models first in clay and then in plaster of Paris; Mr. Bossom would inspect the work and from time to time modify it, always stating that that should be heavy, bold work because it was

not a residence, as called on the drawing, it was for an institution (7800-1).

On cross-examination by counsel for Massachusetts, witness testified that he does not remember what it was called on the drawings,—a residence, a house or something else (7801); that in an interview with Mr. Cole, counsel for New York, he was not shown the drawings and simply recalled the conversation from recollection without any papers or drawings (7802); that Green did not say what kind of an institution it was to be (7802).

On cross-examination by counsel for Florida, witness testified that he set out to carry out the plan which was evidently for a residence and then was instructed that it was not to be considered as a residence so they had to interpret it and built it with a bold front, a front commensurate with what a public institution would have rather than a private institution or private residence (7805); that by boldness, he meant to have a façade or front that would attract the public's attention so they would know it was not a private home (7806).

Counsel for New York gave in evidence N. Y. Ex. No. 236, a copy of a letter from W. P. Allen to Green, January 22, 1923 (7812), in which he said:

"It has been raining here for the last Two Months. I hope that you can arrange your affairs so that you can come to Texas one more time on your trip back home."

Frederick J. Hartwig, of Bronxville, New York, testified that he was an architect and had been in charge of the office of Alfred C. Bossom since 1914; that his employment ceased about 1929 or 1930; that he laid out the preliminary drawings and made the sketches and designed the exterior of the Round Hills House, under Bossom's direction (7818); that Bossom said it was to be laid out in such a way that it could later be converted into a hospital or public institution; that he believes hospital was the correct word; that witness laid it out with the idea of having a general hospital plan, such as a hospital would be, in a kind of H form, with a corridor down the center, and an opportunity to lay out sections as flexible as possible with small rooms or larger rooms as the case might require, and windows so

spaced that there would be a good many windows; that the original instructions with respect to the layout of the building were carried out (7819); that he never met Colonel Green; that the building was fireproof; the outer walls were bearing walls and inside there were columns of reinforced concrete, with floor slabs of reinforced concrete and terra cotta tile supported on reinforced concrete girders and on the bearing walls on the outside (7820); that the roof was of light steel construction and the reinforced concrete columns served the same purpose as steel columns; that the partitions were fireproof and the exterior was steam-faced granite; that the roof was of slate; that some of the floors were of wood and some of marble and tile; on the second and third floors, some of the floors were wood; that there was wainscoting in the principal rooms and that the bathrooms, of which there were no more than in that type of house, he thinks, were of tile (7820-23); that the partitions may have been terra cotta or gypsum block, but the plans indicate terra cotta; both serve the same purpose but gypsum is cheaper (7826); the exterior walls are brick and stone and each wing is enclosed in brick (7827); on each end of the building is a long rectangle 29x54'; that terra cotta has weight carrying capacity when used in small construction but not in a building like this (7829); in this building the terra cotta partitions carried no weight; the interior walls could be easily removed in case of alteration (7830); certain of the fireplaces only go to the ceiling of the first floor or the ground floor level and the weight is carried by the floors, they could be removed without difficulty (7830-1); that to convert the building into a hospital or other institution, it would be redesigned on paper, so as to make a hospital layout, and such of the partitions retained as were necessary and the others eliminated; the rooms on the second floor could be subdivided so as to have a window in each room and would be about twelve by twenty-three (7831); that the plans prepared for Round Hills made provision for a monogram over the main doorway (7832); that Maurice J. Sullivan called upon him in September, 1937, at his office in New York City, but witness never said to Sullivan that it was impossible to carry out the original plan to build the Round Hills house so that it could be turned into a hospital (7833).

On cross-examination by counsel for Massachusetts, he testified that the fireplaces which rested on the second floor did not have flues going to the basement and each of the chambers on the second floor had a tile bathroom; that if the building were converted, the procedure would be to remove all of the interior of the second floor; that this matter was not discussed at the time but they simply made it structurally possible to convert the building into a hospital without shoring or anything unusual (7837); that while conversion was possible, the only details worked out on the plans were the actual residential details; the monogram contained the letters E. H. R. G.—the drawing for it was given to a modeler to work into clay but he does not know whether it was ever sent to the premises or whether the stone was actually cut from the model (7839).

Massachusetts Evidence

Counsel for Massachusetts took the deposition of Rezia (Mrs. Bondurant N.) Jarvis at her residence, 503 Pacific Avenue, Terrell, Texas, on October 20, 1937. The witness testified she had met Colonel Green and that Mr. L. W. Wells, who was related to her by marriage, told her that Green wanted a room in her house and she told him such a room was available (1784); she thereafter received $5.00 a month for three years from the American National Bank, when the payments stopped (1785); at the beginning of this period, the date of which witness could not remember, she testified an unfastened box was left at her house and carried up to the room reserved for Colonel Green; the box contained a part of a man's suit—trousers and vest but no coat. So far as witness knows, Green never came to the house and never slept there; she was away in Summer but never heard that Green had come in her absence (1787-8).

On cross-examination by counsel for Texas, witness testified that she moved to her present residence in 1895 or '96 (1789). The house is owned by witness and her husband; is a large house with nineteen rooms, with the usual living room, dining room, kitchen and family quarters (1790); that Green was a very prominent man in Terrell; witness visited his demonstration farm several times and saw his greenhouses, which were matters of great interest

to the public; Green was highly regarded in the community; witness has made trips on his private car with Mr. Wells and his family (1791-2); that the room rented for Green was furnished by her and not by him and was kept available for him at any time he wanted it; it was a nice commodious room, as large as the parlor of the house (1793); that her house is in Ward 3 and was at that time.

Witness identified a photograph of her house which was offered as Tex. Ex. No. 87.

On cross-examination by counsel for Florida, the witness testified that she made some distribution of the contents of the box after several months; that she would see Green in Terrell but never at the house; that no one came to look after the box of clothes (1795-6).

On cross-examination by counsel for New York, witness testified that she had no arrangement with Green about any special room but if he had come himself he could have selected his room (1796); she does not recall any conversation excepting one with Mr. Wells, who said he wanted a room for him; there was no rent agreement regarding it (1797).

At the hearing in New York City commencing January 22, 1938, counsel for Massachusetts gave in evidence Mass. Exs. Nos. 35 to 47, which had been identified at the hearing in Texas (4889). Ex. No. 35 being a list of Directors' meetings of the First National Bank and American Exchange National Bank, of Dallas, Texas, from April 7, 1900 to May 3, 1921, which were attended by Green after his election April 6, 1900 (4890-93). Ex. No. 36, statement of monthly bank balances therein from October 20, 1900 to March 31, 1937 (4893-4901). Ex. No. 37, signature card, dated August 5, 1897, and statement of monthly balances of Mrs. M. E. Staunton in the National Exchange Bank of Dallas, Texas, November 1, 1900 to September 11, 1911, when the account was closed (4902-8).

Ex. No. 38, excerpts from the Minute Books of the Murray Company, of Dallas, Texas, pertaining to the original appointment of Green as a Director and his election in subsequent years, covering the period from October 20, 1909 to February 18, 1936 (4908-28), indicating in the minutes of the meeting January 13, 1931, that E. H. R. Green and Walter P. Allen were residents of Terrell, Texas; no designation of residence being given in subsequent years. Ex.

No. 39, a letter from Henry C. Coke, attorney at law, Dallas, Texas, January 18, 1912, to Green, 111 Broadway, New York City, inviting him to subscribe to the reorganization of the Max Hahn Packing Company, in which he was a stockholder (4929). Ex. No. 40, letter from Green, dated January 23, 1912, in reply to Coke, in which he says:

"I don't care to put any additional money into the new enterprise, as I have left Texas probably for good and cannot be there to hobnob with Ferris, Jackson and Hahn. I do not care to take any of the new stock and will sell what equity I have in it for $2500.00" (4931).

Ex. No. 41, letter from Green, 5 West Ninetieth Street, New York City, dated July 29, 1916, to E. M. Reardon, American Exchange National Bank, Dallas, Texas, in which he says:

"Now, Reardon, in regard to the directorship in your bank: Of course my duties in New York are going to require that I remain here, except two short visits to Texas in May and November; therefore, I don't know as I will be of any benefit to you as a director, etc." (4932).

Ex. No. 42, reply from Reardon August 1, 1916, to Green, New York City, in which he says:

"I notice what you say about your occasionally visiting Dallas. I presume it will be imperative for New York to remain your headquarters, but I hope that you will visit Dallas often, and stay longer than you have in the past. Our newspapers here have stated at different times that you would make your home in Dallas. This has been quite extensively copied and discussed by your numerous friends, and a great many have asked me if it were true, and they have hoped that such was the case, as everybody down here has a very high regard for you, loves you, and would like for you to live with us permanently. I should like to see you do this myself, but I realize it is probably out of the question. However, when you visit us, you will be received with open arms by everybody here, by your close friends, and the writer" (4933-4).

Ex. No. 43, photostat of check of Green to the order of the American Exchange National Bank, Dallas, Texas, dated May 11, 1921, on the Seaboard National Bank for $100,000,

showing it had been deposited in the American Exchan
National Bank (4935). Ex. No. 44, letter from Green
Reardon May 24, 1921, enclosing foregoing draft and stati
"Mrs. Green and I had a very pleasant return journey fr
Dallas, and arrived home safely after our very enjoyal
although somewhat strenuous trip" (4936-7). Ex. No.
letter dated May 24, 1921, from Green to Edwin Hobl
Vice President, Security National Bank, Dallas, Texas,
garding the above check in which he says, "I understa
that the late unpleasantness has passed, and that you w
be in a position to make return of these funds without a
inconvenience to you" (4937). Ex. No. 46, letter fro
W. B. Scott, President of the Southern Pacific Lines,
Green, New York City, October 11, 1917, regarding propos
conference.

Ex. No. 47, reply from Green to Scott October 13, 191
saying:

"I am in receipt of yours of the 11th instant, and regr
very much not being able to see you in New York. I expe
to leave here about October 24th on my yacht for Texa
and the only definite date I have fixed is that I wish to b
in Terrell to vote on the 6th of November. Upon my arriva
in Texas I shall take pleasure in calling on you at Houston
either on my way up to Terrell or on my way back" (4939

Counsel for Massachusetts further gave evidence by th
following witnesses tending to prove:

MARY STAFFORD, of New York City, testified that he
family formerly lived in Texas and became acquainted wit
Green at the Windsor Hotel in Dallas about 1905, whe
she was nine years old; Green was then living on Elm Stree
and Miss Mabel Harlow, sometimes known as Mrs. M. E
Staunton also lived there; after they moved to the Com
merce Street house and up to 1910 witness often visited
them (4951-2); they came East about 1911 and witness
visited them in the Fall of 1916 at 5 West Ninetieth Street
for from three to six weeks; witness was then married
(4953); she next saw them July 10, 1917, at Highland Park,
Illinois, where they were married and after that in August,
1917, on the yacht "United States" and remained with
them until December 22nd; they went from Glen Cove,
Long Island, to Block Island, then to Buzzards Bay, back

to New York and then to Texas; while at Glen Cove, Mrs. Green and witness discussed with the Colonel the building of a home on Long Island and he said he did not want to—he did not want to pay taxes in New York State (4955-6); later, when they were in Buzzards Bay, near Round Hills, he talked of building a house there on account of his mother; witness and Mrs. Green expressed a preference for building at Glen Cove and he said he did not want to build on Long Island but wanted to build on his mother's place at Round Hills (4956-7); on that trip to Round Hills witness met Mr. Gideon Howland, Green's cousin, who came aboard the yacht; they went ashore and around the premises and bathed on the beach while they were there; in October they started on their cruise to Texas, encountered storms and had a miserable trip (4958); in Galveston, they met Green's friends and witness went to visit her brother and Green went to Dallas or Terrell; after he returned to the boat they went to Corpus Christi on a fishing trip and returned to New York about the middle of December (4959); she next saw Green in Chicago in May, 1918, and he told her she must come to the Waldorf because he did not want her living alone in New York; that witness came East with him and Miss Harlow about the 18th of May and a few days later began an engagement on the stage with a company at the Winter Garden, remaining with the same company in different shows until 1921 or 1922, and during that period she stayed with Colonel and Mrs. Green at the Waldorf (4960-62); in the Summer of 1918, about the 30th of June, Green went to Round Hills on the Fall River boat (4963); witness lived at the Waldorf and every week when Green came to his Directors' meeting she would see him; he usually arrived on Thursday morning and left Friday evening; while there he used to go to the show at the Winter Garden (4964); they returned from South Dartmouth about October and went to Texas about the middle of November; the Winter of 1918-19, they spent at the Waldorf, New York City (4966); they went to Round Hills about June 30th, 1919, and witness spent four or five weeks with them on the house boat "Day Dream" after the sinking of the "United States"; August 22nd was Green's birthday and he was in New York for a Directors' meeting and the yacht capsized on the 19th or 20th, just before his birthday (4967); during that Summer he came to New York to Directors' meetings usually travelling on the Fall

River boat; he would attend the meeting, shop and go to the theater in the evening (4968); in 1919, they lived at the Inn at Round Hills and the next Summer on the house boat "Day Dream" when witness visited them (4969-70); Green was very busy getting ready for the house and watching the building (4970); the Winter of 1920-21, they lived at the Waldorf and witness lived with the family, which comprised Colonel and Mrs. Green, Ruth Lawrence and witness (4972); Walter Marshall, the secretary, lived in the house at Round Hills but not in New York; Ruth Lawrence (granddaughter of Judge Lawrence), Dana North and Dorothy Marshall (daughter of his secretary) visited them in the Summer (4973-4); these girls and a French girl, Jenny Turpaud, were protegees of Green and educated largely by him (4975-6); in the Summer of 1921, about June 30th, the Greens left New York for South Dartmouth; the Round Hills house was open that Summer and witness remained there the entire Summer (4977); they returned the latter part of October and Green went to Texas and Mrs. Green, the maid Gerta and witness went to French Lick, where they received a telegram from Mr. Marshall, stating that Green had received an injury or was ill and returning to New York; they returned to the Waldorf and found Mrs. Wilks and a doctor with Green (4928); witness recommended her physician, Dr. Pascal, to Green; the doctor said the injury had caused water on the knee or something and he must stay off of it for some weeks; the first or two days he was up he fell against something and hurt his knee (4979); about January, 1922, witness went with Green, Mrs. Green and Gerta Larsen, his nurse, to Marlin, Texas; Green also went to Terrell and they all went to Dallas at the conclusion of the trip; Green said the treatment had benefitted him and later they returned to New York; in the Summer of 1922, they left for South Dartmouth about the usual time (4981-2); a brother of witness sent Green a radio from Dallas while he was in Marlin and he became much interested in it and bought several sets and had some sent to Round Hills; this was the beginning of what later developed into the Round Hills Radio Corporation, of which witness was a Director; that Summer Green spent a great deal of time out of doors in his little automobile called the "cream puff" (4983). Witness identified Mass. Ex. No. 393 as a picture of the automobile and it was given in evidence (4984), and said he used this car a good many

years at Round Hills. She also identified photographs of the sun porch and the radio station (with Green at the radio station) and the same were given in evidence as Mass. Exs. Nos. 394 and 395 (4986). Also identified photograph of the radio broadcasting studio, containing pictures of the witness and her two cousins, and the same was given in evidence as Ex. No. 396; also photograph of the loud speakers on the water tower which was given in evidence as Mass. Ex. No. 397 (4987-8). Witness further testified that Green stayed a little later each year at South Dartmouth—one year stayed very late (4989); he also told them he could not stay there longer than six months, that he had to get out before six months, as he explained, on account of the taxes, and would divide the rest of the time between New York and Florida (4989-90); that witness was at Round Hills again in the Summers of 1923, 1924, 1925, 1926 and 1927, the last year she was there; that Green was usually building something; when he tired of the radio he started on the airport and the dredging for the "Charles W. Morgan" (4991); he did not discuss his plans with them and never told them in advance when he was going to leave; that Mrs. Green and witness were told by Mr. Marshall when the private car was ordered (4992); that when getting ready to go to Round Hills witness noticed that Green was very happy and when getting ready to leave he was very sad, always in a bad humor (4993); from 1922 to 1927, when at the Waldorf, he would have his breakfast, perhaps be dressed by Gerta, sit at his desk and work on his stamps and different people would call—that was about all he did; during this period he went out several times in his automobile; he had his catalogue and stamps in front of him and semed to be working on his stamps all the time (4994); he was confined to his apartment practically all of the time and did not enjoy it at all (4995); in 1923, witness went with Green and Mrs. Green to Miami, staying at the Royal Palm Hotel; they took trips on the canal practically every day; Green became interested in the house boat "Pioneer" and bought it and they boarded her at Jacksonville and took a fishing trip (4996); in 1924, they went from New York to Jacksonville and went aboard the house boat "Colonel", which Green had built; this was the year Green purchased the Star Island property (5000); that from the time he suffered this illness in Dallas in 1921 through 1922, 1923

and 1924, aside from the fact that he was crippled and not able to get about "he was perfectly all right;" Dr. Pascal would call on him before and after his trips (5001); in the Summer of 1925, at South Dartmouth, Green suffered a severe illness, while Gerda Larsen, his nurse, was in Sweden; witness had returned to New York from a week-end trip and was called by Mr. Walter P. Allen, got on the train, went to Round Hills and found Green very ill; asked Mrs. Green to send for Dr. Pascal and Mrs. Green said she was afraid to do so without Green's permission; after talking with him, he told witness she might send for him and she came back to New York, called up the doctor and also Mrs. Wilks and told her to come to Round Hills, that he was in a very serious condition (5002); in 1926, witness was with the Greens at Miami Beach and at South Dartmouth; his health was much better than in 1925; that year he left in December; witness was with them in 1927 at Miami Beach and at South Dartmouth but left them about September 15th or 17th and shortly thereafter went to Europe, where she remained until 1934; she never saw the Colonel after 1927 but saw Mrs. Green in 1936; that Green often talked with her about his mother, of whom he was very fond; sometimes he would cry when he was speaking of her (5004); he always objected to Mrs. Green and witness going to New York during the Summer, he said he had built this home and wanted us to stay there and we had to; he said he was a resident of Texas, "we always laughed about that because he did not have a home there;" he said he had a room with Mrs. Jarvis, with a trunk, and paid $5.00 a month for this room (5005); he stated one time that as soon as he got rid of the Texas Midland Railroad he was not going back to Texas; he always called the Midland a white elephant, he said, "Mary, when I unload this white elephant I am not going back to Texas" (5007); Green did not care for society and entertaining; he did not care to make friends; when he went to Round Hills every one in the Summer colonies called but he did not return their calls; he seemed to enjoy association with the people that came out to Round Hills to listen to the radio or the people that were working on the place (5008); during the time witness knew him, he was not affiliated with any churches or religious organizations (5009).

On cross-examination by counsel for New York, witness testified that she was originally from Dallas and her brother

was an electrician there; that witness was married to Dr. Eckles in Dallas in 1912 and Green was then living in New York (5010); that according to her recollection he left about 1910 or 1911 and she next saw them in 1916 and was matron of honor at their wedding; that she had been in correspondence with Mrs. Green meanwhile and went on the honeymoon trip on the "United States" (5012); that she made her home with the Greens in New York from 1918 to 1927; she was never Green's ward but he supported her and furnished her with funds to live on during this period (5013).

On cross-examination by counsel for Texas, she testified that she knew Green had passed a good deal of blood and that Dr. Pascal said he was suffering from chronic anemia; he was a very strong man but she did not mean to say he was in perfect health (5016); that his illness in 1925 was rather sudden; Gerda left and after she left Green did pretty much what he wanted to and took bromo-seltzer and codeine; it required the constant attention of the nurse to watch him to prevent him from practically destroying himself with stuff like that (5019); the students from the Massachusetts Institute were not there when she was there; that it was before she left that he lost interest in the radio (5022); that he took a good deal of pride in his Texas activities and talked with witness about them (5024); during the period she was in Europe from 1928 to 1934, she was in correspondence with Green and Mrs. Green but did not see him again before his death (5025); that she receives an annual income of $2,600 under the Terrell Trust, of which Mrs. Wilks and Mr. Allen are Trustees (5026); these payments, for good reason, may be stopped by the Trustees (5028). On Cross-examination by counsel for Florida, witness testified that she visited Colonel Green and Miss Harlow in Dallas the first time in 1910 and there was no one else in the household except the servants; she visited them on Commerce and also Elm Streets (5029); the last time she visited them was in 1910 just before they went to New York and the next was the visit in 1916; that at Elm Street she only stayed an afternoon or night but at Commerce Street she stayed perhaps two or three months (5030); that when witness was a baby in Dallas until she went to California they had her with them a good deal (5031); Green never said whether he occupied the room in Terrell but stated he was keeping it because he wanted to

establish a residence in Texas and on account of Texas taxes—to avoid taxes; he used to joke a good deal about the room—his home in Texas—but witness does not remember exactly what he said; he also laughed about the room and trunk (5032); between 1910 or 1911 and 1916 she corresponded with Colonel Green and Miss Harlow from Chicago to New York at 5 West Ninetieth Street and visited them at this address; the household consisted of Colonel Green, Miss Harlow and the servants and was equipped as a residence, with a dining room, bedrooms and all the things that go to make a home (5034-5); witness stayed there six weeks and returned to Chicago; the next visit was when they were married at Highland Park, Illinois; Mrs. Green asked her to be matron of honor; she joined them on the "United States" at the Columbia Yacht Club or Glen Cove, went to Block Island, Buzzards Bay and back to Glen Cove and the Hudson; that witness spoke of buying an estate on Long Island and thought it was much nicer to have an estate in Long Island than in Massachusetts, that Green did not think so and said he wanted to avoid taxes; they went on this honeymoon in the "United States" to Florida and Texas and stayed at Tampa (5037-8), and then to Galveston and left the boat for Dallas, re-embarked at Galveston for New York, stopping at different places, reaching there about the middle of December and remained on the boat until December 22nd (5039-40); in May, 1918, Green and Miss Harlow came from Texas, joined her in Chicago and they came on to New York and went to the Waldorf, where he had living quarters and slept and ate; that was their home (5041); on the first visit to Florida in 1923. Green made no arrangements for the delivery of any boat; they stopped at the Royal Palms Hotel, a very expensive place and stayed there two or three months (5045); they cruised around in a boat chartered for the day but frequently motored; he went from there to the Windsor Hotel in Jacksonville and remained a week or ten days waiting for the "Pioneer" which he had just bought (5046-7); he had to wait several weeks for its delivery and they then went on a fishing trip for about ten days (5048-9); the "Pioneer" was a large comfortable house boat; when they went to Florida in 1924, they waited at Jacksonville several weeks for the house boat "Colonel"; Green had a derrick on the front of it and it was a funny

looking boat, a monstrosity, and the canal was not wide enough for the boat and they got stuck (5052); they went from there to Miami and stayed that Winter in the house boat; that was the year he bought Star Island; Green was always busy shopping and driving around; witness liked Star Island; it was very beautiful (5054); in 1925, when they returned to Florida, they went aboard the "Colonel"; Green was very busy with the building operations at Star Island; was not home very much (5054-5); the house was not completed in 1926 but witness spent one night there (5057); in 1927, they were installed in the house; beautifully furnished; much of the furniture had been made for the rooms; the grounds were landscaped and very beautiful and drives were laid out; it was one of the show places there and the Island was occupied by the finest residences; there are no business houses, radio apparatus or "hot dog stands" around there (5058-9). The witness further testified that in the Summer of 1927 she went to Round Hills in July and remained until about the 15th or 17th of September; that she never saw any good weather up there; it was not always foggy; oftentimes they could not have the display of fire works on the 4th of July because of the fog—the dampness; that Round Hills is between Nonquitt and Salters Point, colonies of Summer residents (5062); that after the early Fall the houses are boarded up for the Winter but a few people remain there (5063); that Green broke ground for the foundation, then he left for New York; in 1921 and the next year he kept working on the radio; that he lost his interest in the radio when he started the airport which was laid out in front of his property (5064); that Green was not inclined to talk about his business and witness and Mrs. Green knew nothing about the "Charles W. Morgan" until they saw the dredge coming in, and building of the foundation started (5066); that Green had not lost his interest in the airport when witness left in 1927 (5067).

On cross-examination by counsel for New York, witness testified that when Green came East from Texas in 1910 or 1911 he went to the Waldorf-Astoria, New York City; he was with his mother at that time and told witness his mother was making her Will and it took her three weeks to do it (5068); witness saw the furniture at 5 West Ninetieth Street in Dallas in the Commerce Street house oc-

cupied by Green (5069); she made her home with the Greens at the Waldorf from May, 1918 until 1927—wherever Green's home was was witness' home; that Green had two chauffeurs and two Pierce-Arrow cars in New York, which bore New York registration plates all the time he lived in New York (5070-1); that Ruth Lawrence lived at the Waldorf during the Easter holidays and at Christmas and when she came from Wellesley in June until she left for Round Hills (5072); that witness could not see any great improvement in Green's condition after he went to Dr. Buie's clinic (5073); whenever Green went to Massachusetts, Florida or Texas he returned to New York (5074); that the radio sets bought by Green in 1922 were delivered to the Waldorf (5074); that Green had a habit of taking up something, becoming very much interested in it and then dropping it for something else; that he was happy when moving to Round Hills and sad when returning because he disliked being housed up in the Winter and liked to be in the open in the Summer (5075-6); but he liked Round Hills also (5076); sometimes he was interested in his stamps; sometimes not; when he got some new ones he was very much interested and spent a great deal of time going over and arranging them (5076); witness remembers that Green had a blood transfusion and an operation but cannot tell which came first; that he never complained until the dentist extracted all of his teeth and then wanted to take out his tonsils (5077-8); in 1919 or 1920, he got a nurse and always kept one after that, even in 1922 to 1924, when witness said he was in good health (5080); up until 1921, Green always attended theaters and baseball games; he liked first nighters but stopped going to them because his knee hurt him and it was difficult for him to get in and out of the theater (5082).

On redirect examination by counsel for Massachusetts, the witness testified that she had been receiving the same annuity for many years prior to Green's death; that his boat "Ruth Dana" was named for Ruth Lawrence and Dana North and the "Mary" for witness and "Mabel G." for his wife (5084).

On cross-examination by counsel for Texas, the witness testified that from going with or conversations with Colonel Green she knew he cast his vote in Terrell, Texas, and knew it was very important for him to get there in the Fall; that he was devoted to his politics (5084).

Thereupon, counsel for Massachusetts gave in evidence the following Exhibits relating to domicile, etc.:

No. 69, letter, dated February 21, 1914, from Charles W. Pierson to Green (5092) reading:

"Section C of the Federal Income Tax Law provides that returns of individuals subject to the tax shall be made 'to the Collector of Internal Revenue for the district in which such person resides or has his principal place of business.'

In view of this provision I am of the opinion that a resident of the United States may lawfully file the return in the district of his or her residence, and that this right conferred by the statute cannot be taken away by regulations of the Treasury Department.

I understand that the residence of your mother, Mrs. Green, is Bellows Falls, Vermont, and that your residence is Terrell, Texas. In my opinion she and you may lawfully file your income tax returns in the districts of your respective residences" (5092-3).

No. 70, letter to Charles W. Pierson December 30, 1918, from Walter H. Marshall regarding Massachusetts income tax for 1919 and enclosing a notice in which it was stated that a penalty of $5.00 a day would be charged if no return is filed by March 1st (5097-8).

No. 71, Pierson's reply to Green January 3, 1918 (should be 1919) (5101) reading:

"Mr. Marshall sent me a State Income Tax Notice received by you from a bank in New Bedford with the inquiry whether or not you should pay any attention to it.

The Massachusetts Income Tax Law provides (Section 12):

'Every person who is an inhabitant of the commonwealth at any time between the first day of January and the thirtieth day of June, both inclusive, in any year, shall be subject to the taxes imposed by this act.'

As to what constitutes an inhabitant an official ruling of the Tax Commissioner provides:

'The word inhabitant as used in Chapter 269 of the General Acts of 1916 shall denote a legal resident in this commonwealth, a person whose legal domicile is herein.'

In a letter from the Massachusetts Income Tax Deputy dated September 14, 1916, it is said:

'The word inhabitant has in the past been used in all of our laws relating to taxation, and signifies a legal resident or person having a legal domicile in Massachusetts. There would, therefore, be no tax imposed on a person who is a legal resident of New York City who resided temporarily in Massachusetts.'

As your domicile is Texas it would seem, therefore, that you are not taxable under the present Massachusetts Income Tax Law although you spend part of your time at your Round Hill Farm in Massachusetts" (5101-2).

No. 78, letter from Ernest R. Duff, South Dartmouth, February 26, 1919, to Green, New York City (5104) reading:

"The last time I saw you you said you would see Mr. Pierson in regard to whether it made any difference as to *Taxation* if the 'United States' was in Massachusetts waters on April 1st or not, and let me know the result so that I could arrange to have the ship out of the state on that date, and arrange to have her hauled out and inspected at the same time. I find that the Crowning Shield ship yard across from Fall River will undoubtedly be able to haul us, also the Thames Tow Boat Co.'s Dock at New London, Conn. These are the only shipyards between Boston and New York with the capacity to Dry Dock the United States, and before they will accept the job, must have the approximate dead weight of the ship which I have written to Geilow & Orr, to kindly furnish me with, both of these yards (as I presume all others are) are under the control of the U. S. Shipping board whose consent has to be obtained before a job can be accepted" (5104-5).

No. 79 and 79-A, Green's reply to Duff March 10, 1919, enclosing memorandum from Pierson dated March 6, 1919 (5107-11), concluding:

"I am therefore of the opinion that if a yacht removes from Massachusetts waters before the assessment day, April 1st, that it would not be taxable as it would not be within the jurisdiction" (5111).

No. 80, letter from Green to Duff March 10, 1919 (5112), reading:

"In regard to the hauling out of yacht UNITED STATES, I would suggest that you have her hauled out to New London, in Connecticut, the latter part of March. This is in answer to your letter of February 26th.

I would have her painted black with gold stripe at the same time. Advise me before leaving New London on the return voyage whether to bring her to New York or not" (5112).

No. 81, letter from Green to Oliver Prescott, New Bedford, Massachusetts, April 2, 1919 (5114-16), reading:

"I am in receipt of Form of List of Polls and Property which I am supposed to have at South Dartmouth, but I don't know what the custom is in your State.

Aside from the wharf at South Dartmouth I have about $8,000 worth of crated machinery, which I would consider personal property. The building and wharf, of course, would come under real estate. The property at Round Hills consists of new houses and some new farming equipment.

Being a non-resident of your city, I would like to have you suggest the proper way for me to outline my tax list up there, and advise what the custom is. Very luckily for me, the yacht United States happened to be in New London on the first day of April to go into dry dock. Therefore, I suppose that is not taxable. I have a lot of little boats which do not really belong to the farm.

In the State of Vermont it is sometimes best to let them 'dun' you, while in other States it is best to itemize the buildings, stating the estimated cost of them. I am absolutely unfamiliar with the custom in your section of the country, and would like to have your opinion as to the proper tax for me to pay in South Dartmouth. Of course, you understand that personally I am a resident of the State of Texas and do not live in South Dartmouth nor visit there between the months of January and July. Therefore I do not come under a Resident Tax, as Terrell, Texas is my legal home" (5115-16).

No. 82, letter to Green, New York City, from Charles W. Pierson April 25, 1919 (5117), reading:

"As you doubtless know, the Legislature at its session just ended, passed an income tax law which is now before the Governor for approval. The rate of tax is 1% of the

amount of net income not exceeding $10,000, 2% of the amount in excess of $10,000 but not in excess of $50,000, and 3% of the amount in excess of $50,000.

As you may not have seen a copy of the bill I quote the following provisions for your information:

Under Section 351 the tax on non-residents is upon the entire net income "from all property owned and from every business, trade, profession or occupation carried on in this state by natural persons not residents of the state" (5117-18).

No. 104, letter from E. M. Reardon, American Exchange National Bank, Dallas, Texas, to Green October 1, 1920 (5120), reading:

"There are two States in the Union which have the community property law—one is Texas, and the other is the State of Washington. These, I understand, are the only two states which have such a law. A late ruling of the Treasury Department at Washington is that all *incomes* of *married men* can be classed as community property, and so taxed. Thus, instead of pyramiding one large income, you can make two *incomes* out of it, paying the tax on each income. So, if you are a citizen of Texas, and I take it you are, it might be well for you to look into this, for it would be a great saving to you.

For your information, I enclose you herewith the printed rulings which have been handed me by an auditing firm here. I take it that, in case of death, the entire property would *not* be considered community property. As I look at it, it is simply *that the earnings* of the property of a married man can be construed as community property, *and taxed as such.* So you can see yourself, instead of paying the income tax on the one income, it can be regarded as two incomes, and taxes paid accordingly" (5120-21).

No. 110, letter from Green, New York City, to the Assessors of the Town of South Dartmouth, Massachusetts, May 20, 1921 (5123), reading:

"Relative to placing an assessment on my property at Round Hills and on the machine shop at South Dartmouth.

I am perfectly willing to give you the details and contracts of what we were actually compelled to pay and the additional bills that we were forced to pay on account of

the unfortunate war that has just passed. As you gentlemen are aware, labor during that period was abnormal, and also the prices for certain classes of material that went to build the house. I shall be very glad to show you my books and help you in any way that I can, and I expect to be at South Dartmouth during the middle of next week, at which time I will call upon you and get your ideas of what you would like to have me furnish you for your assistance. I want to be perfectly fair and want to pay my share of the taxes of your town, as my intentions are to remain with you, but I do not think I should be called upon to pay on values that were used during the war when men were getting $12 a day for work that can be done at the present time at $4.50 and $5.00, because I have no real benefit from that, and that is not an actual value.

I shall also be glad to show you our contracts for the furniture, rugs, carpets, etc., which have been greatly overestimated in the newspapers, as you know how these things are done. The only possible objection I can possibly make to giving the figures at the present moment is that I do not believe that persons who have built during the period of the war should pay taxes on the high cost of labor because they have nothing to show for it" (5123-24).

No. 128, letter dated November 3, 1922, from P. C. Lee to Charles W. Pierson regarding taxation of the yacht "United States" (5127), reading:

"Several days ago the enclosed notice was received from Wm. C. Lothrop, Collector, Galveston, Texas, showing a Property Tax assessed against Colonel Green of $555.00. Inasmuch as the Colonel owns no property either in the County or City of Galveston, we are under the impression that the tax must relate to the yacht 'United States' as Galveston is its port of registry. I took the matter up with Colonel Green, and this morning received a letter from him reading as follows:

'Replying to yours of October 26th, enclosing tax bill on the "United States" amounting to $555.00, I would suggest that you have Mr. Pierson write the Collector at Galveston, Texas, that the yacht "United States" was sunk in Apponagansett Bay, near South Dartmouth, Mass. in the year 1919, and a wrecking party towed her into New York and patched her up; that her inside furnishings have been

removed; that she has been on the market for sale, that it has been impossible to get any bids; that it wo require someting like $50,000 to put her engines and h in proper repair; that she cannot be moved under her o power and that she has not been in the Port of Galvest for five years' " (5128).

No. 145, letter from W. P. Allen, Terrell, Texas, to Gre at Jacksonville, Florida, January 21, 1924 (5130), in whi he says:

"I am herewith enclosing your Poll Tax Receipts, bo County, State and City for the present year. I presu that you still wanted me to pay these as this is electi year and you had not instructed me otherwise" (5131).

No. 189, letter from said Allen to Green, Miami Beac Florida, January 17, 1925 (5132), reading:

"I received your telegram this morning, and I am her with enclosing you the poll tax orders. I forwarded the to New York two days after I wrote you the letter, as found I did not have any at the time, and they probab will reach you before this does. However, as I wrote yo the last time, I will pay them and get the receipt any wa but I did not know Mrs. Green's age, and will have to gue at it, however, I can have it rectified after you send n this" (5133).

No. 190, letter to said Allen from Green, Star Islan Florida, January 19, 1925 (5134), reading:

"I am today in receipt of your letter of the 12th, enclos ing poll tax order, which I have signed and return here with.

In regard to the coming change in Post Masters at Ter rell, if I am requested to endorse any candidate, you ma rest assured that I shall do nothing until I hear from you

Thanking you for attending to the poll tax matter, remain" (5135).

No. 191, letter of said Allen to Green at Star Island Florida, January 24, 1925 (5136), reading:

"I received your letter of the 19th, with the poll tax orde enclosed, and I am herewith enclosing you both the City State and County poll tax.

Very glad indeed to know that you decided not to move your official residence to Florida" (5136).

No. 207, letter to Green, New York City, from Charles W. Pierson July 8, 1926 (5138), reading:

"Mr. Potter has shown me the bill from the County Tax Collector at Miami for personal tax for the year 1925, including a poll tax of $1.

Unless you have decided to change your legal residence to Florida, I think this poll tax should not be paid, as its payment might be held to constitute some evidence of intention to make Florida your legal residence.

The provision of the Florida Statute is:

'A poll tax of $1. shall be levied upon each male person over the age of twenty-one years and under the age of fifty-five years who has resided in this state more than one year.'

I suggest, if it meets your approval, that you send a check for the amount of the bill, less the poll tax, accompanied by a note to the effect that you have not resided in the state more than one year within the meaning of the taxing statute" (5138-39).

No. 215, letter from said Allen to Green, New York City, December 14, 1926 (5139), reading:

"It is getting about the time that we were paying yours and Mrs. Green's poll tax again, and I presume that you still want me to pay it in the County.

I can wait until January 31st, and if I do not hear from you to the contrary, I will pay it as I have done heretofore" (5140).

No. 217, letter from said Allen to Green at Star Island, Florida, January 28, 1927 (5141), reading:

"Not having heard from you to the contrary, I paid the Poll Taxes as I have heretofore done, and enclose you the receipts.

Think I will get down there somewhere about March 1st, and am thinking of coming Via Galveston and Key West; believe a little water trip would do me good" (5142).

No. 218, letter from said Allen to Green February 1, 1927 (5144), stating:

"I herewith enclose you the City of Terrell Poll Tax receipts which I failed to send you the other day through an oversight" (5144).

No. 219, letter from Green to said Allen February 11, 1927 (5145), reading:

"I am very much obliged to you for looking after the poll taxes, and beg to enclose herewith my check No. 7517 for $5.50 to reimburse you.

Trusting we may have the pleasure of seeing you here at Star Island some time before the season closes, and with best wishes, I remain" (5146).

No. 220, letter from Green to Charles W. Pierson, New York City, March 28, 1927 (5147), reading:

"I am in receipt of your letter of March 25th, advising that Mr. Locke, as attorney in fact, filed a petition in my behalf in connection with the petition on appeal to the United States Board of Tax Appeals from the ruling of the Commissioner of Internal Revenue disallowing the claim for deduction on account of the loss of my yacht, for which please accept my thanks.

Yes, I am enjoying my life down here very well, in the land of oranges and alligators.

There is a question coming up soon in Texas, which I expect to discuss shortly, and that is the matter of the lease or sale of the Texas Midland Railroad. What has been going through my mind is this: Would it not be better to make a sale and take a loss, which we might be able to use as a deduction in the Income Tax? Of course, if we lease the road it will be at a loss, and a lease would be for so long a time that it would be the same as a sale, and we could not use it for tax purposes. I will appreciate it if you will advise me just along what lines to talk in my discussion, and I will be governed by your advice" (5147-48).

No. 223, letter from Green, New York City, to W. P. Allen, June 27, 1927 (5149), reading:

"There has been no change in the situation regarding the Midland. When there is, I will keep my promise and advise you.

I get pretty stiff now and then here in New York but my general health seems to be pretty good, and I think I will feel much better when I get down to the farm, where I can be out all day in the sunshine and fresh air. We leave here the night of June 30th" (5150).

No. 233, letter from said Allen to Green, Star Island, December 31, 1927 (5152), in which he says:

"The Midland application was presented in Washington on yesterday, and it is in all the papers now. I notice that in their application, a copy of which we got today, that in their preamble they say the price was Two Million, Two Hundred *Twenty-five Thousand*, and the copy of the contract you signed with them was Two Million Two Hundred Fifty Thousand Dollars, a difference of Twenty-five Thousand Dollars. * * *

I am enclosing you another proxy for our meeting on the 10th and if you have time I would appreciate it if you would sign it. You did not write me anything about the poll tax matter. I have until January 31st to pay this, and I am awaiting your instructions. If I can ever serve you in any way send for me at any time" (5153-54).

No. 234, letter from Green to said Allen January 6, 1928 (5155), reading:

"Replying to your letter of December 31st, in regard to an apparent error in the price stated in the application to the Interstate Commerce Commission, beg to say that I have called the attention of our attorney to the matter and he will doubtless straighten the matter out.

In regard to the poll tax matter, I would be glad to have you take care of it as you have in the past.

Everything is beautiful here, but the cold weather of the past week or so has stiffened me up considerably; however, I believe I shall soon bake out here" (5156).

No. 238, telegram from Green to Charles W. Pierson May 10, 1928 (5158), reading:

"Southern Pacific has requested my legal residence address for next year in order to qualify as a Director of their Lines in Texas and also as President and Director of the Texas Midland. Do you see any reason why I cannot claim Terrell Texas as still my legal residence address" (5159).

No. 239, telegram from Pierson to Green May 11, 1928 (5159-60), reading:

"Your telegram tenth See no reason why you cannot still claim Terrell Texas as legal residence" (5160).

No. 258, letter to Green, Round Hills House, from Charles W. Pierson, December 5, 1928 (5161-62), advising him of the necessary steps for the liquidation of the Westminster Company and the incorporation of Green Estate, Incorporated.

No. 261, letter from W. P. Allen to Green January 18, 1929 (5164), reading:

"In the absence of any contrary instructions from you, I have paid the Poll Tax receipts as usual and herewith enclose them to you" (5165).

No. 262, letter to said Allen from Green, January 21, 1929 (5166-7), reading:

"I am in receipt of your letter of January 18th, enclosing poll tax receipts, and I thank you very much for attending to the matter for me.

I think you did a pretty good job when you got rid of the Texas Short Line for $175,000.00, and hope you will now ease down a little and take things more tranquilly. I hope you and Mr. Gill, with your wives, will be able to take the trip to Florida in your automobile and if you do we shall, of course, expect to see you at Star Island" (5167).

No. 283, letter from said Allen to Green, Star Island, April 24, 1930 (5169), reading:

"I have not heard from you in a long long time and have been hoping that you would decide to spend a month at Marlin this year but from what I can hear, I am afraid that you are not coming.

I saw McDonnough the other day and he told me of his visit with you and I was sorry to hear that you had not been feeling well.

I presume by the time this letter reaches you that you will be getting ready to start North again" (5170).

No. 285, letter from Walter H. Marshall to said Allen, May 1, 1930 (5171), enclosing Green's check for $5.50 in payment of State, County and City poll taxes for himself and Mrs. Green.

No. 286, letter from Charles W. Pierson to Green, Star Island, May 6, 1930 (5173), reading:

"I have your note of May 3rd and shall be glad to confer with you on your arrival in New York.

A letter received this morning from the Reverend Currier contains a lot of additional newspaper clippings and gives an interesting bit of information which he says was gained in a secret and confidential way and is not yet public.

It seems that the Listers consulted an eminent Vermont lawyer and have been advised that if they list the Estate for any sum the Town will have to pay the State tax on the amount, whether it is collected or not. As failure to collect would bankrupt the Town, the information is that they are not going to list it.

If this information turns out to be accurate I should feel considerably relieved, because it would be difficult to contest an assessment without entering an appearance in Vermont and submitting to the jurisdiction, and that is to be avoided, if possible" (5173-74).

No. 287, letter from John M. Bullard, of Crapo, Clifford, Prescott & Bullard, New Bedford, Massachusetts, to Green, New York City, May 29, 1930 (5175), reading:

"You told me last summer that if any change in the tax law in Massachusetts came to my attention that you wished I would report it to you. The General Tax Revision bill has fallen through but there was passed, a little less than a year ago, a statute ruling out the word June 30th. This can in no way benefit you and might hurt you but as that date has been a magic date with you I thought you might like to know of the change and perhaps come to Round Hill earlier. I enclose the old statute and the new for your information" (5176).

No. 288, letter to Green, Sherry-Netherland Hotel, New York City, June 10, 1930, from Charles W. Pierson (5178), reading:

"While I am not an expert on Massachusetts law, I have made some examination of the recent amending statute (Section 2 of Chapter 361 of the Acts of 1929, approved May 31, 1929) and the Massachusetts decisions involving the meaning of the word 'inhabitant', and see no reason why you should not go to Round Hill in June rather than July.

Under the present statute I cannot see that this would affect your position one way or the other in case an attempt were made to classify you as an inhabitant of Massachusetts for purposes of taxation" (5178-79).

No. 304½, letter to Green from Charles W. Pierson, February 10, 1931 (5218), reading:

"I have been giving a great deal of consideration to this question and am writing you at this time as I am planning to spend the next few weeks in Bermuda.

In case it becomes certain that Texas is to enact an income tax law oppressive to large estates I think that on the whole you would be better off as a resident of Florida taxable in Texas only on income from property and business in the State. A burdensome income tax law was introduced in the Texas Legislature on January 28 or thereabouts. I have been unable as yet to get any very definite information as to its chances of becoming law or when it would probably take effect if enacted, though my latest advices were that it is not likely to go through at any very early date. The Legislature, I think, sits for one hundred and twenty days' regular session, or through April.

In law a change of legal residence involves two elements: first, actual presence in the new domicile, and second, intent to make the change. As you are actually living in Florida you are in a position to make the change of legal residence by simply making up your mind to do so—forming the intent. The important thing would be to be able to prove the intent and when it was formed.

One way of showing intent would be by registering as a voter in Florida; another would be by making returns and paying taxes (including poll tax) as a resident of Florida. These things would, however, involve some delay and should be supplemented if possible by evidence showing that the intent was definitely formed before the Texas income tax law went into effect. For this purpose I would suggest that you arrange to be advised by telegram as soon as any income tax law passes the Texas Legislature or becomes certain of passage and before it goes to the Governor for signature, and that you thereupon instantly—

Write a letter to your office here stating that you have changed your legal residence to Florida and directing that future tax returns and other papers be drawn accordingly;

Write a letter to the Texas Midland or to the offices of the Southern Pacific in Texas stating that you have changed your legal residence to Florida and instructing that their records and future publications be amended accordingly.

If you are listed as an officer or director in other Texas corporations or organizations it would be well to write similar letters to them.

Of course these are merely suggestions for your consideration in case you decide to make the change" (5218-20).

No. 327, letter from W. K. Potter to Charles W. Pierson, October 5, 1932 (5179-80), reading:

"I am in receipt of the enclosed form from Mr. Green this morning, from which you will note that the Department of Taxes and Assessments of the City of New York, has registered him as a non-resident for the year 1933 at $5,-000.00.

Mr. Green requests that I turn this over to you for your attention" (5180).

No. 308, letter from John M. Bullard, New Bedford, Massachusetts, April 22, 1931, to W. H. Marshall, Star Island (5182), reading:

"I have received the Dartmouth tax form which Colonel Green asked you to send me. It is the practice of the assessors to send these to all owners of property in Dartmouth every year. Nothing is required with regard to the real estate although the blank, for some reason or other, contains statements about it. The assessors like to have the form filled out covering the personal property. However, if they receive no list, they proceed to 'doom' the personal property, that is assess it for any sum that they see fit. If they assess it too high and no list has been filed, the taxpayer has no recourse. However, their regular course is to assess it for considerably less than ordinarily would be the right value to return it at. If the Colonel has been filing no list in the past, as I am inclined to think has been the case, I should not advise him to file a return this year unless he noticed a jump on the assessed value of his personal property last year, which he considered unreasonable. This personal matter has nothing to do with the Radio Corporation or Whaling Enshrined, which we handle in another blank which is filable in June. If the blank were filed, it should give the value of all household furniture and all other tangible personal prop-

erty owned by the Colonel and located in Dartmouth on April 1 with the exception of automobiles. The tax would be assessed at somewhere around $30. a thousand on the value returned. I shall do nothing further about the return unless I hear further from you" (5183-84).

No. 328, letter from W. K. Potter to Charles W. Pierson, October 6, 1932, enclosing assessment notice against Mabel E. Green in the amount of $5,000 (5184).

No. 329, letter from Pierson, October 14, 1932, to Green, Round Hills, Massachusetts (5186), reading:

"Mr. Potter has handed me for attention the notices of assessment against you and Mrs. Green as non-residents for New York personal tax for the year 1933.

Before deciding what had better be done I should like to know what, if any, personal property (other than cash, bank accounts, and securities which are not taxable) you and Mrs. Green or either of you are keeping within the State of New York, also what, if any, insurance you carry on any personal property in this State.

The assessments are for only $5,000 apiece, which would mean a tax of a little over $100, and it may be that the wisest course would be to let them alone and not apply to have them canceled. However, we can tell better about this if you will let me know the facts.

I was sorry to learn a few weeks ago that you had been a little indisposed and trust you are feeling in good shape again" (5187).

No. 330, letter from Green, South Dartmouth, Massachusetts, October 15, 1932, to Charles W. Pierson (5188-9), reading:

"Replying to your letter of October 14th, will say that all I have in the Sherry-Netherland apartment is a stamp collection and the safes in which the collection is kept. To me, this collection is worth more than $5,000.00. All Mrs. Green has in the apartment is a radio set and perhaps some cast-off clothing" (5189).

No. 331, letter from said Pierson to Green, Round Hills, Massachusetts, October 17, 1932 (5190), reading:

"On the facts stated in your letter of the 15th inst. put into affidavit form it would probably be possible to have the assessment against Mrs. Green canceled or reduced.

On the whole, however, we are inclined to advise that nothing be done about either of these small assessments.

Should an attempt be made another year to increase them we will take the matter up again" (5190-91).

No. 334, letter from W. P. Allen, Terrell, Texas, to W. K. Potter, January 28, 1933 (5192), reading:

"For the last several years I have been trying to get the Colonel to move his official residence to the State of Florida, anticipating that we were going to have an Income Tax in Texas, but for some reason he has never done so, and up to now we have had no Income Tax but there is no question but what the Legislature now in session is going to put a drastic Income Tax in Texas and it is going to cost him a lot of money and I am writing him today relative to same and I think it will save him probably two or three hundred thousand if he will change his official residence to Florida where they have no Income or Inheritance Tax and I think his Federal Return this year should be filed in the State of Florida.

Of course, it is none of my business but I think it is my duty to keep him posted on what is going on here and if he realizes what this is going to cost him, not only in Income Tax but our Inheritance Tax is going to be fierce and if after his death he should have to pay Inheritance Tax in Texas, it would probably take a third of his estate.

Of course he will write you about this himself but I think it is urgent" (5192-3).

No. 335, letter from said Allen to Green, Star Island, January, 28, 1933 (5195), reading:

"For the last few years I have been keeping you informed as to the taxation laws in Texas and I have thought for some time it would be best for you to move your official residence to the state of Florida and file your Federal Income Tax Return there.

The present Legislature now in session is going *to pass a very drastic Income Tax Law* and if you file your Federal Income Tax Return in Texas and claim this as your residence, you will have to file State Income Tax Return here also and it may run into large figures.

I believe, much as we appreciate having you as a citizen of this state, that in order to save this large amount of

money each year, to say nothing of Inheritance Tax, that you should change your residence to the state of Florida where they have no Income or Inheritance Tax" (5195-6).

No. 336, letter from W. K. Potter to Charles W. Pierson, January 31, 1933 (5197), reading:

"Enclosed please find for your information, letter I received today from Mr. W. P. Allen, in connection with the proposed tax measures which he thinks they will enact during the present session of the Texas Legislature" (5198).

No. 337, letter from Green to said Allen, February 14, 1933 (5199), reading:

"In connection with your letter regarding a proposed change in my legal residence from Texas to Florida, I enclose herewith copy of a letter I have just received from Mr. Charles W. Pierson, my attorney in New York.

If, as suggested by Mr. Pierson, you will keep me posted by telegraph of the progress of the proposed income tax legislation in Texas I shall be very much obliged to you" (5199).

No. 339, letter from Green to J. H. Lummus, Assessor, Miami, Florida, March 31, 1933, enclosing tax return blank for the year 1933 on the same basis as previous year, in which he says (5200):

"In regard to the intangible personal tax return, will say I have been advised that inasmuch as my legal residence is in another state, I am not required to make this return for Dade County. If my understanding is not correct, I would thank you to so advise me" (5201).

No. 340, acknowledgment to Green from said Lummus, April 3, 1933 (5202), reading:

"I wish to acknowledge receipt of yours of March 31st, enclosing tangible personal return on the same basis as last year, which is satisfactory to the writer, and you will be assessed accordingly.

However, under our law, inasmuch as you are not a citizen of this State, you would not be subject to the intangible tax except, on bank stocks, as bank stocks are assessible only at the location of the bank and therefore I will assess against you the stock owned on the basis that we have ac-

cepted from the bank as a fair value of the stock. It is, therefore, unnecessary for you to file an intangible return unless you care to do so" (5202-3).

No. 354, letter from W. P. Allen to Green, South Dartmouth, Massachusetts, October 17, 1935 (5205), reading:

"The New Deal administration, most of which I do not approve of but some of it I do, reminds me that you resemble Roosevelt very much in one respect. When you were riding up and down the Midland in your private car and lived here in Terrell you were always for the under dog and the humblest paddy on that line could get your ear quicker than the officials of the railroad. In this respect you resemble the President. Where you don't resemble him is that in the last tax bill written they make it mandatory upon you not only to take practically all you make but they tell you how to write your will and leave about ninety-eight per cent of it to the Government. However, don't forget that the Republicans were nearly as bad as the Democrats because they boosted this rate themselves away up yonder. You know I have been trying to get you for several years to change your residence to Florida but never did have any luck. We have a bad inheritance tax law in Texas which, added to the Government's, will just about wipe your estate off the map. In addition to all this, we have recently voted an old age pension law which is going to take some twenty-five millions of dollars to pay and the legislature is now in session and there is no doubt in my mind but what they are going to pass an income tax law, as the Governor is against a sales tax which I am for. I don't see how any of us are going to make very much money hereafter and all I am trying to do is to keep what I have" (5206-7).

Thereupon counsel for Massachusetts gave in evidence the following Exhibits relating to miscellaneous matters:

No. 67–1/4–A, letter to Benson and Hedges, New York City, and signed by Walter Marshall, August 14, 1910, stating, "Mr. Green requests that in future you do not send cigarettes to him at Dallas, Texas, as he is now located in New York" (5221). No. 67–1/4–B, statement of account of Benson and Hedges, August 1, 1910 (5223).

No. 67–1/2, telegram, August 16, 1910, to F. B. McKay, Terrell, Texas (relating to McKay's testimony R. p. 824),

in which Green says, "I see no chance in near future for change in management of Midland Road" (5225).

No. 69–1/2, letter from Green to Gielow & Orr, New York City, September 4, 1917, in which he says, "I have just returned from a trip to Buzzard's Bay,—we are going to lay in the harbor for one week," and calling attention to certain things in the boat that needed correction and enclosing check for $20,000 in payment of bill (5226-7).

No. 72, letter from Green, March 22, 1918, to New Bedford Gas & Edison Light Co., authorizing construction of line from Salter's Point to buildings on Round Hills Farm (5228-9).

No. 74, letter from Green to Editor of The Rudder, May 23, 1918, in which he says:

"Replying to your favor of May 11th, I beg to advise that it has not been our intention to drop our subscription to The Rudder. The delay in renewing has been due to the fact that the yacht United States is tied up at my country place, The Round Hills Farm, South Dartmouth, Mass., and it has not been decided at what point mail intended for it should be addressed. We expect to be there June 15th and as soon as the proper address is decided upon, our renewal for The Rudder will go forward along with subscriptions for other magazines and papers for which we intend to subscribe" (5231).

No. 77, letter from Green to Mr. Pierce, United States Fuel Administration, Boston, October 28, 1918, regarding the "United States" (5234), reading:

"I am the owner of the Yacht United States, which is about 265 feet in length, with 41 foot beam and four decks. This yacht was built by me before the war started. I am also the owner of the farm known as the Round Hills Farm, South Dartmouth, Mass., off which the yacht laid all summer.

The yacht cost in the neighborhood of one million dollars; she has a great deal of inlay and stucco work; has all modern plumbing, and, unfortunately, has the vacuum system of heating. * * *

I hope some time to make Massachusetts my home, and I don't want to be compelled to take the boat south, as I would like to have it remain in Massachusetts waters for next summer, should peace prevail. If not, we have pur-

chased a wharf at Padenarm for the purpose of tying her up until after the war is over, and the only coal needed is to keep the temperature between 36 and 40 degrees.

* * * * * * *

An immediate decision will be very much appreciated by me, and as I am leaving for Texas today, I would request that you direct your reply to 111 Broadway, New York City, instead of South Dartmouth, as my office will be kept advised at all times of my route" (5235-6-7).

No. 87, invitation to Green to attend the Nonquitt Casino and tennis courts, June 28, 1919 (5238-9). No. 87–A, statement of subscription rates (5239-40). No. 88, letter from Green acknowledging same and subscribing for the season 1919 but regretting inability to attend July 4th because they were giving their employees a dance at the wharf and they had promised to be spectators (5241-43).

No. 86, letter from Green to Oliver Prescott, New Bedford, June 28, 1919, regarding removal of stone wall and erection of fence to keep out intruders, in which he says:

"I am really sorry we have to go to this extreme, but am spending several thousand dollars for plants trying to beautify the place. It is principally the servants of the summer people at Salter's Point and Nonquitt that are doing the damage. Our intention is to make the place somewhat of a show place, and am growing plants of nearly every known variety.

I will arrive after the 2nd of July at South Dartmouth, and my address will then be South Dartmouth Postoffice" (5248).

No. 89, letter from Marshall to M. H. Walsh, Rose Specialist, Woods Hole, Massachusetts, September 18, 1919, ordering 2,000 Rambler Roses for Round Hills (5249-50).

No. 90, Walsh's acknowledgment of the order, September 20, 1919 (5251).

No. 112, telegram from Green to Gerda Larsen, Waldorf-Astoria, New York City, November 4, 1921, reading, "Will arrive with my bad knee six thirty P. M. Saturday" (5253).

No. 117, letter from Green to Oliver Prescott, New Bedford, June 9, 1922, requesting him to form the Round Hills

Radio Corporation for broadcasting station at Round Hills, to own the apparatus, buildings, etc., and stating:

"As I shall not be able to go to New Bedford or South Dartmouth before July 1st, I wish you would please send all communications to 111 Broadway" (5256-8).

No. 121, letter dated June 17, 1922, from Green at the Waldorf-Astoria to the Hancock Electric Company, Dallas, Texas, regarding the purchase of a loud speaker to be delivered to the Adolphus Hotel "with the understanding that if I returned it to you it would be re-packed and shipped to me at my residence in South Dartmouth, Mass." and directing same to be forwarded to the Round Hills Farm by express (5259-60).

No. 122, letter from Green, June 26, 1922, to Newson and Company, Publishers, New York City, reading:

"Our radio broadcasting station which is now being installed at Round Hills Farm, South Dartmouth, Mass. will be ready for operation on July 15th. In addition to our regular concerts, lectures, etc., it is our desire to broadcast bedtime stories for the benefit of the children. Would there be any objection to our using for that purpose a book entitled 'Folk Lore From Foreign Lands,' by Catherine T. Bryce, published by you? The stories will, of course, be read by an accomplished elocutionist or reader, and your firm will be given due credit in the announcement and also in the program published in the daily papers" (5261-2).

No. 123, letter dated June 28, 1922, from Green to B. R. Duff, South Dartmouth, stating:

"We are due to arrive New Bedford on the train reaching there at 7:42 A. M., railroad time, July 1st. We will probably have baggage enough for one of the big farm trucks" (5263).

No. 125, letter from Green to G. N. Chase, Broadcasting Sales Engineer, Western Electric Company, August 30, 1922, regarding unsatisfactory broadcasting horn on the water tower, in which he states:

"My principal object in installing this Public Address System was that I might be able to entertain my friends going down on the Bedford Boat" (5265-66).

No. 126, letter from Green, September 4, 1922, to "Dorothy" (Marshall, daughter of his secretary), advising her to go to school in the East instead of the South (5269-71).

No. 127, letter from Green to E. B. Craft, of the Western Electric Company, September 15, 1922, congratulating him on the successful installation of the radio station for the Round Hills Radio Corporation, etc., and stating that about October 1st the 500 Watt Station would be ready for installation, and

"In this connection, I beg to advise you that I have never had anything please me more than the operation of this 100 Watt Station, especially so when we were advised by mail that we had been clearly received as far north as Prince Edward's Island and as far south as Norfolk, Va. * * * Since the 100 Watt Station was declared ready for operation, we have been broadcasting continuously, without interruption" (5273-5).

No. 129, letter from Green, President of the Round Hills Radio Corporation, to the Wireless Specialty Apparatus Company, December 16, 1922, giving dimensions of buildings, etc., for installation of wireless, in which he says:

"Unfortunately for me, I am expecting to get away tomorrow on a trip south, to see if I cannot boil out the little Rheumatism that is left in me" (5276-8).

No. 148, letter from Green, June 30, 1924, to the Economist Stamp Company, New York City, stating:

"I am in receipt of yours of June 28th and can see no reason why you should send the celluloid pockets to Southampton, as I have never resided there and have no intention of doing so.

* * * For your information, I will state that ever since the Pilgrims my address has been as follows: E. H. R. Green, Round Hills Farm, South Dartmouth, Mass" (5279-80).

No. 154, letter from Green, October 13, 1924, to the Treasurer of The E. Howard Clock Company, reading:

"I was very glad to receive your letter of October 10th. The old Howard Regulator, purchased from you a number of years ago, is still in my possession and I had it shipped

from Texas to my home here in South Dartmouth. As I remember, this particular clock was on exhibit at the Centennial in Philadelphia in 1876, and if there is any authentic history connected it, I should like to give it a place in a sort of a museum I am establishing here in connection with the 'Charles W. Morgan.' I would be glad to have you advise me" (5282).

No. 172, letter from "WHM", South Dartmouth, November 13, 1924, addressed to "Mrs. Lee", reading:

"I enclose herewith Dartmouth tax receipts for the year 1924. I suppose your file is the proper place for them.

I fully expect to be here until about Christmas, as the Colonel has just bought a closed electric car for his own use on the place. It will be heated, of course, and he can be *perfectly comfortable* running around the place in it. Goody, Goody, Goody !!!" (5283).

No. 191½ letter from Green, Star Island, to Mr. Coke, Dallas, Texas, February 4, 1925, regarding real estate investments in Dallas and stating:

"After going thoroughly over my mother's history, in connection with about two thousand pieces of property she owned, I have concluded that real estate is the poorest investment a person can have. On one or two pieces we made a great deal of money, but in cheap localities, such as the location of the Dallas Amusement Company, the sooner it is disposed of the better off everybody will be. No property of that nature will steadily improve at the rate of 8% a year.

* * * * * * *

My experience has been that if you own property in three or four different parts of a city, you may make something on one piece, but on the balance you will lose. You must remember that on Commerce Street property the cream has already been raked off. In my opinion a miracle will have to strike Dallas if money is to be made on real estate that is kept any length of time. Out of seven or eight pieces of property in Dallas Henry Hamilton and I owned and which we sold before I left there I do not believe there is one but what could be bought today for within one or two per cent of what we sold for. My mother's motto was 'Property should not be owned except for a residence or

place of business.' However, I am willing to do anything that the rest of you want to do" (5287-8).

No. 194, letter from Green, Star Island, April 2, 1925, to "Eugenia" (Corley, of Terrell, Texas) asking if she wants "to be one of Uncle Ned's little girls at Wellesley—I am now making out my budget of expenses for the coming year for the other young ladies" (5291), and stating his requirements if she accepts (5290-91). No. 211, letter from Green to John H. Levi, Miami Beach, October 26, 1926 reading:

"I am very glad to hear your report on Star Island, and we are going to do everything in our power to get our house back into shape for our friends during the coming winter season.

I note what you say about the tile roofs coming off. If you have any suggestions to make, it will give me pleasure to follow them in this connection. I have had much experience with tile at my home here at South Dartmouth and I would be glad to know what can be done in Florida.

* * * * * * *

If there is anything I can do toward helping Miami Beach get on her feet again, let me know and I shall be glad to help put it over" (5294-96).

No. 222, telegram, June 8, 1927, from Green to Harry Neyland, New Bedford, reading:

"Please extend to the Town of Dartmouth and its citizens my hearty congratulations on the anniversary of its birthday. Kindly welcome all the people who are perpetuating and continuing the memory of our good old town and extend to them for me a hearty handshake, which I regret exceedingly it is impossible for me to deliver in person. I also extend my congratulations to the winner of the flag prize" (5296-7).

No. 225, letter dated July 30, 1927, from Green to Mrs. Frederick H. Brooke, Nonquitt, Massachusetts, explaining his plans for Round Hills and giving assurances regarding the operation of the proposed airport there (Testimony of W. M. Marshall shows that he composed this letter) (5303-9).

No. 236, telegram from The Standard, New Bedford, to Green, Star Island, April 23, 1928, reading:

"Newspaper dispatches say you will spend Summer at Star Island. Please wire us if you are to be at Round Hills as usual this Summer"

and No. 237, Green's reply to The Standard, April 23, 1928, reading:

"Round Hills July first, Deo volente" (5310-11).

No. 257, letter from Green to the New York American, Circulation Department, New York City, December 4, 1928, renewing subscription and stating:

"The papers should be sent as follows: From Dec. 15th, 1928, to June 15th, 1929, E. H. R. Green, 46 Star Island, Miami Beach, Florida; from June 15th, 1929, to Dec. 15th, 1929, E. H. R. Green, Round Hills House, South Dartmouth, Mass" (5313-14).

No. 278, letter to Green, Star Island, January 27, 1930, from Martin Dunn, transmitting certain questions as a basis for an interview, and No. 279, Green's reply, January 31, 1930, reading:

"I have carefully read the questions you have asked me and have answered them to the best of my ability" (5315-17).

No. 317, letter from Green, February 6, 1932, to L. W. Rogers, Miami, reading:

"I am in receipt of your letter of February 5th, requesting permission to place my name in nomination for a Governorship and the Presidency of the Dade County Humane Society and, in reply, will say that while I keenly appreciate the honor you desire to confer upon me, on account of my physical condition and the fact that I am a resident of Dade County for only a few months during the year, I am forced to decline" (5318-19).

No. 332, letter from Green, November 8, 1932, to O. P. Austin, National Geographic Society, Washington, request-

ing a life membership and enclosing his check for $100, stating:

"My permanent address for your records should be as follows: E. H. R. Green, Round Hill House, South Dartmouth, Mass." (5319-20).

No. 341, letter from F. R. Warburton, of Graybar Electric Company, Inc., to Green, January 8, 1934, regarding certain stamps, and Green's reply thereto, No. 342, January 10, 1934, in which he says:

"I am returning the photostats herewith and beg to say that on account of the trouble in connection with a stamp collection and my interest in other business, I have given up stamps entirely and my only hobby now is coins" (5321-25).

No. 344, bill dated September 18, 1934, to Green for 71 jig saw puzzles (5325).

No. 353, letter from Green to Lee Schwartz, New Bedford, August 1, 1935, reading:

"Replying to your letter of July 31st, I beg to advise that the designation 'Round Hills' was given to this estate by the Federal Government when the lighthouse was built, which, I think, was around 1828. We have always stuck to that name and it has never been used in connection with any outside commercial enterprise; therefore, I regret that I am unable to comply with your request" (5328).

No. 312, letter dated August 1, 1931, from Harry T. Wilson, General Secretary, The American Numismatic Association, to Green, Round Hills, acknowledging receipt of his dues for 1932 and two subscriptions to The Numismatist the magazine to be mailed to Round Hills and Star Island, stating they had the address, Sherry-Netherland Hotel, New York City, on their records, and No. 313, reply from Green to said Wilson, August 5, 1931, stating:

"I am in receipt of your letter of August 1st and, in reply, beg to advise that my address at the Sherry-Netherland, New York City, is only temporary and is used only for a short time between my summers in Massachusetts and winters in Florida. The two addresses given you are correct, etc." (5330-33).

WALTER H. MARSHALL, New York City, testified that he had been private secretary to Green until the date of his death and entered his employment May, 1910, at Dallas, Texas; that he had been secretary to the President of the National Exchange Bank in Dallas, of which Green was a Director, and met Green in the President's office; after leaving the Bank, he was secretary to railroad officials in St. Louis and Mexico City (5334-5); he returned to Dallas and was employed by the Kansas City Southern as Freight Agent and Green sent for him and asked him if he would like to go to New York as his secretary; he left Texas with Green, but without his family, for New York about July 21, 1910, went to the Waldorf-Astoria and made that their stopping place; Green had a suite of rooms and witness was with him in the Hotel for several months; Green conducted his business there and had no office staff other than witness; they returned to Texas in November (5336-38). After examining Tex. Exs. Nos. 20, 21 and 22, November 10 to 14, 1910, witness stated he was then with Green and wrote his acknowledgment, Ex. No. 21 (5340); he and Green returned to New York and came back to Texas for the Governor's inauguration, at which Green was present in his regalia (5341).

Witness identified Tex. Ex. No. 26, January 7, 1911, photograph taken at the Fair Grounds at Dallas, Texas (5342); also photograph of Governor Colquitt and his personal staff; that Green had this photograph tinted in colors and kept it at Round Hills and was considerably attached to it. The same was given in evidence as Mass. Ex. No. 398 (5343).

The witness further testified that Green returned to New York and was there until May, 1911, when he went back to Texas, attended a meeting of the Texas Midland Railroad and remained three or four weeks, then went back to New York and moved into 5 West Ninetieth Street (5345-6); that Tex. Ex. No. 57, a deed from Green of property on Commerce Street, Dallas, executed in New York City September 26, 1911, confirms his recollection that at that time Green disposed of his Commerce Street house (5346); that during the remainder of the years 1911 and 1912 Green resided at 5 West Ninetieth Street, where Miss Harlow joined him; witness brought up his family in the Fall of 1910; in 1912 and 1913, they were in Texas for the annual meeting of the Railroad for three or four weeks (5347-8);

in 1913, witness resigned because he did not get along with Mrs. Hetty Green and returned to Green's employment at the latter's request, about July 15, 1916, after her death (5349); he assisted in the moving of his office to 111 Broadway, New York City; from the Summer of 1916 and through the years 1917, 1918, and 1919, Green continued to take those periodical trips to Texas in the Spring and Fall, of the same approximate duration (5351); that witness left him again in November, 1919; that during this period Green's health seemed to be very good, he would come to the office, remain a few hours, dispose of their business, attend Directors' meeting or go to a baseball game; during this period he lived at the Waldorf-Astoria; after his mother's death, he purchased the yacht "United States" and had it sent by the Great Lakes and St. Lawrence to New York, where it was cut in two and about 50 feet added to the middle, making the biggest yacht in the world (5352-4); that he was present at Green's wedding at Highland Park, Illinois, July 9, 1917, and went with Green to Round Hills in 1916 or 1917 to look over the place with Z. B. Davis, of New Bedford (5354-5); Green was looking for a spring which he said he knew was there as he remembered it from his boyhood days when he used to go down there; they walked all over the place trying to find the spring which they eventually did; Green outlined to Davis what he had in mind and the houses he wanted to build for employees, etc., and said he was going to build his home there; his idea at first was to build his home close to the beach and for some reason changed his mind and built it up on the hill where it is today; that from his talks with Green he knew this was on property that belonged to his mother; Green said he was going to develop the place (5355-6); that on another occasion they met Gideon Howland, a relative of Green, in his house on Smith Neck Road—the house is there today (5360); witness was with Green at the Adolphus Hotel, Dallas, Texas, when he had his illness; he had joined him there in October, 1921, and was continuously in his service until August, 1925, when, at Green's direction, he went to Marlin, Texas, for his health (5362); he returned to Green's service in January, 1926, and continued with him until his death at Lake Placid (5363); when first employed by Green in 1910, he received instructions from him to always describe him as of Terrell, Kaufman County, Texas,—these

instructions were never changed (5363); after Green came to New York in 1911, he never told witness that he intended to return to Texas to live or intended to build a house in Texas, nor did he say why he claimed Terrell, Texas, as his residence (5364); he told witness he could not go to Round Hills before July 1st on account of taxes; he said he could not stay in Massachusetts more than six months because of taxes and when the time was getting rather close, witness would remind him that they had better get out and Green would say, "All right, we will get out; we will get away from here all right" and witness would say, "Well, I had better be ordering the private car", to which Green would reply, "We will get that in plenty of time"; these conversations occurred usually every year when they were staying at South Dartmouth until December (5364-5-6); that Green always seemed very anxious to get to Round Hills again (5366); and for some time before going there, he would be getting ready to leave; he never said anything to witness or in his presence regarding the ultimate disposition of the Round Hills House after he had ceased to use it as a residence and never heard him talk of moving out of it, nor did he ever say what use he anticipated would be made of the house after his death (5367); Green did not care for social life; he did not want people coming around him (5367); he had the "Isola Stella" built and wanted it named for Star Island and asked witness to find some Italian who would give him the name "Star Island" in Italian and witness did so (5368); referring to "Gooseneck Bill" McDonald's testimony (R. 539), witness denied that he had any telephone communication with him in 1928 or at any other time (5373); that witness never drew a check to said McDonald (5379); he further testified that 26 servants were kept in the Round Hills House and there were 81 employees on the estate as a whole, including those in the house; there was a steward, butler, first and second footman, chauffeur with helpers, cook help's cook and help's cook helpers, utility man, gardeners, house engineers, night watchman, bus driver, laundry man, ladies' maid, chambermaids, pantry and parlor maids, painter, carpenter and office manager and two trained nurses, Mrs. Green's personal maid and her chauffeur (5380-1); at the airport, there was a superintendent and assistants; there were always two or three there; on the farm, there were 40 or 50 farm hands; there were in all 256 acres (5382); the usual cus-

tom was to leave Round Hills for New York and while there the servants would close the Round Hills house and the steward would take them down on the Clyde or Mallory Lines; some would come in their own cars; they would open the Star Island house and in the interim Green would be in New York; six or seven servants would be left at Round Hills and fifteen or sixteen taken to Miami; Round Hills was kept heated during the Winter; five or six of the employees lived in the house and the others went to town at night; Round Hills was never closed except so far as appearance went; they boarded up the windows but kept the house heated and a skeleton force there throughout the Winter; none of the servants went to the Waldorf-Astoria or Sherry-Netherland in New York, or to Marlin, Texas (5383-4); they took with them baggage consisting of Green's and Mrs. Green's personal trunks and the trunks of the nurse and the witness but did not take any stamp collections; later, when he became interested in numismatics, he took those with him (5385-6).

Witness identified Mass. Ex. No. 342, a letter from Green to Warburton, January 10, 1934, in which he said he had "given up stamps entirely", as a letter he had written and stated that this was the fact; at that time the stamp collection was in New York at the Sherry-Netherland Hotel (5387); in the last year or two of his life, Green took up a stamp collection of another kind through a dealer in Miami, Mr. Neuman, a collection of twentieth century stamps (5387-8); that he had some of his numismatic collection at South Dartmouth but witness cannot say whether he carried any stamps (5388-9); that Ruth Lawrence was a ward of Green who went to St. Mary's at Peekskill and afterwards to Wellesley, she spent the Summers at Round Hills; Green gave her an automobile; she graduated from Wellesley in 1925; that Green bought securities through her husband, Stewart Briggs, of Fairhaven, opposite New Bedford; that Jennie Turpaud was a French orphan and Green sponsored her education at the Wilkes-Barre Institute (5390); Rose LaMontague was a maid in the Waldorf-Astoria, a French-Canadian, for whom Green paid for a business course; Dorothy Marshall was witness' daughter, she was on the "United States" with Ruth Lawrence and Dana North in 1918; Green sponsored her education; she attended high school at Chevy Chase, outside of Washington, for two years, then returned to New York and took

special courses at Columbia for a year and afterwards a course in kindergarten work with the Froevel League; she was a frequent visitor at Round Hills and was married in 1926 (5390-2); she married Dr. Thomas B. Glass, a member of the Buie Clinic; Dana North was a friend of Ruth Lawrence, and Prudence Corley was the daughter of Thomas E. Corley, Treasurer of the Texas Midland Railroad; Green sent her to Wellesley College; she frequently visited Round Hills in the Summer and was married in June, 1929; Eugenia Corley was her sister; she went to Randolph-Macon and afterwards to Wellesley, at the Colonel's expense, and was a frequent visitor at Round Hills; Frances Cammack was a cousin of Mrs. Stafford and was sent by Colonel Green to the Hoc-A-Day School at Dallas to prepare for Wellesley College, but later went to Walnut Hill, Massachusetts; she attended school until 1933 and was a frequent visitor at Round Hills; Margaret McElroy was a cousin of Mrs. Green from Providence, Rhode Island; Green sent her to the Morgan School in Dallas; she went to several camps and schools, some of which were in New England; she entered Wheaton College at Norton, Massachusetts, but did not graduate; she frequently visited Round Hills (5392-96); Eileen Stephenson was a little girl the Colonel saw in New Bedford, took an interest in and started to educate; he sent her to the School in the Pines, Massachusetts, and she went to the Boston University for two years and was there at the time of his death; she was the last of the young ladies he tried to educate; during the last few years Eileen Stephenson would come to Round Hills in the Summer and stay all Summer; Virginia Ware was a sister of Mrs. Ben Hodges and visited at Star Island; Jeanice Hodges was a daughter of Mr. and Mrs. Ben Hodges, formerly of Terrell, Texas; she visited Round Hills and Colonel Green had her educated at New Bedford and sent her to school in Miami; Laura Fernandes was his numismatic clerk, formerly of New Bedford, who died of tuberculosis (5398-9); that Green kept up a pretty voluminous correspondence with these girls and teachers of the schools where they were; that he would get their report cards, look over them and tell witness to write them a letter; Ruth Lawrence was the only one who graduated from any college; some of them spent a part of their vacations visiting the Greens at Round Hills; they would be invited up and their expenses paid during the vacation sea-

son (5399-5400); that aside from these girls, Green entertained very little.

Dr. Stratton, President of the Massachusetts Institute of Technology, called on Green occasionally at Round Hills, both before and after the experimental work of the Institute; Green was very much interested in this work and agreed with Dr. Stratton to pay $20,000 a year (5401); that he opened his estate at Round Hills to the public and they came in large numbers; in the early years, he liked to go down to the beach, about a half or three-quarters of a mile from the house, park his car and the people who knew him would come around and talk and on Sunday he might stay there for hours talking to people who were interested in what he was doing; he would park his car at the ramp, about 150 or 200 feet from the "Charles W. Morgan," and could see the people going into the "Morgan." Counsel for Massachusetts then gave in evidence Mass. Ex. No. 373, a table of the visitors to the "Charles W. Morgan" from May 7, 1925 to July, 1935, showing a total of 1,275,923 visitors; in December, January and February, the number of visitors dropped to a few hundred (5405-6); that the "Morgan" was open to the public the entire year from May 1 to November 1; visitors were allowed to go on it in the months of December, January and February but there was only a watchman there; during the other months there was an entire crew, consisting of a captain, a mate and nine sailors, paid by Green; admission was free (5407).

Witness then identified the following photographs of Green and other persons at Round Hills, which were given in evidence as Mass. Exs. Nos. 399, 400, 401 and 402 (containing the inscription W M A F—The Voice From Way Down East), No. 403 (the Blimp of the Goodyear Company showing the name "Mayflower"), No. 404 (a picture of the "Charles W. Morgan" with a great many flags representing different owners of whaling vessels which Green had had made from descriptions he obtained and which were distributed on his birthday, July 21st, of each year), No. 405 (a picture of the blacksmith shop for forging of implements for whaling which Green had transported from New Bedford to Round Hills), Nos. 406, 407 and 408 (miscellaneous photographs of various persons at Round Hills) (5409-23).

On cross-examination by counsel for Texas, witness testified that at the time Green employed him as his secretary

in Dallas he told him his mother was not well in New York and he had to go to help her with her business and asked if witness was willing to go to New York (5425-6); witness did not take his family because he thought it was temporary service in New York; in May, when he visited Texas, Green attended to his railroad business and in the Fall he would remain long enough to vote in the elections (5427-8); Green was very much interested in Governor Colquitt's election. Witness had read of his intimacy with "Gooseneck Bill" McDonald in the papers but did not know of it personally and never met him until he saw him once in New York (5428-9); the last time Green was in New York to stay over night was 1933—three years before his death (5430); Green was not a traveler in the sense of trying to see the country but witness has been with him in St. Louis, Chicago, San Francisco, New York, Massachusetts and in Dallas, Marlin and Terrell, Texas; was with him in 1921 when he had a severe attack from an old complaint (5432); he was never a well man from that day until he died, could not get around with facility and had to use a wheel chair or lean on some one (5433); witness knew he had pernicious anemia and was with him when he had some of the blood transfusions; the doctor told witness Green had heart trouble (5434); his instructions from Green were that in all legal documents his residence should be shown as Terrell, Kaufman County, Texas; he recalls a certificate for distinguished service to Texas in which his residence was given as South Dartmouth, Massachusetts, and the Colonel sent it back with instructions to change it to Terrell, Kaufman County, Texas; that was about two years before his death (5435) (see Tex. Ex. No. 18-A, January 15, 1935, p. 1042); when traveling around and stopping at hotels, Green would give Terrell, Texas, as his residence; when he was able, he liked to register himself; after he was ill witness registered for him (5436); Green did not spend any money on the old Howland house on the Round Hills estate, he sort of glorified the yard around it (5438); there was an old cemetery near by in which were two of his ancestors and they buried a dog "Beauty" there; he was a great dog lover (5439); witness wrote most of the letters which have been produced in evidence and composed them as well as wrote them; this practice had been going on fifteen years before Green's death (5439).

Witness identified Mass. Ex. No. 225, a letter written to Mrs. Brooke July 30, 1927, relative to the airport and said he wrote every word of it (5440); that when witness and Green visited Round Hills in 1916 or 1917, he could not say whether Green used the word "house," "place," "Summer place" or "Summer home" in describing what he intended to build there (5443); until the Texas Midland Railroad was disposed of, part of his salary was paid him as secretary to the President of that Railroad; Green was very careful about paying his poll taxes in Texas (5444); Green's close friends lived in Dallas and Terrell, Texas—the great majority of them (5445); that heat was kept on in the Round Hills house Winter and Summer because of the dampness (5447-8); that Round Hills is between Nonquitt and Salters Point, where most of the residents are seasonal and not permanent (5449); that he has never known Green to attend any meetings of a club or society of which he was a member.

On cross-examination by counsel for Florida, he testified that he was born in Ohio and went to Dallas, Texas, when about twelve years of age (5454); that he first saw Green when he was sixteen or seventeen years old upon the streets of Dallas (5456); that when he became connected with the Bank, he saw Green every week, almost every day; he was then staying at his Commerce Street house; it was a three-story house with living quarters where he made his home; never saw him at Terrell or elsewhere during this earlier period (5458-9); he was employed by Green in Dallas in 1910 upon the understanding he would go to New York; between May and July, while in Green's service, he was living at the Commerce Street house in Dallas; did not see him in Terrell during this period before they came to New York (5460); they had their office at the Green Floral Company, also on Commerce Street, which was sold by Green about a year later (5460); witness' family came in the Fall of 1910 and it must have been before that that Green indicated the position in New York would be permanent (5462); the meetings of the Railroad Directors were held at Terrell; Green would stay there about three hours and come back to Dallas to the Adolphus Hotel or to the Southland Hotel (5463-4); he did not stay at Terrell overnight and had no living quarters there; that was the uniform rule, and witness never stayed with Green a single night in Terrell and never saw him there prior to 1910; when he went to

vote in Texas, Green stopped in Dallas (5464-5); that at 5 West Ninetieth Street, New York, Green had a regular household establishment where he slept and ate (5466); after his mother's death, he changed his living quarters to the Waldorf; it was about the same year when he talked of going to Round Hills; the house there was started in 1918 and he moved in July 1, 1921; witness has seen a fog bank there for a month at a time (5468-9); that if the heat was not kept on Winter and Summer the water would seep through and discolor the paintings (5470); Green spent a great deal of time and money on the radio station and improvements, but as the years went on—two or three—he lost interest, allowed the licenses to lapse and turned it over to the Massachusetts Institute of Technology, getting rid of it so far as he was concerned; later the students came from the Institute and made use of the laboratories, etc., studying the atom, etc. (5470-1); the Massachusetts Institute of Technology also tried to find some way to get rid of the fog; the whale ship came before that (5472); Green formed a corporation and bought the whale ship and furnished the money for dredging, buildings, etc., that went to make up the museum (5473); he did no farming except for the produce that was used in the house; he had some goats, cows and three or four horses; a small portion of the farm was devoted to that; about 79 acres were used for the airport (5474-5-6); they went to Florida in 1923 and while in Florida, he seemed to be very much pleased with his surroundings; he went out every afternoon in a power boat (5480); that year while cruising he purchased the large house boat "Pioneer" and when he left Miami, went to Jacksonville to pick it up (5482-3); in 1924, he stopped at Jacksonville and went down in the "Colonel," a very large house boat—one of the largest there—to Miami (5486); that year the Colonel was out every day in his automobile, seemed to enjoy it and made many friends (5488); he had a "star" for automobile privilege and was a sort of idol of the people; he was proud of the attention he received; he became interested in real estate and finally purchased the property on Star Island, buying three lots with a frontage of about 600 feet on the Bay and began to make plans for his house, the landscaping of the grounds, etc. (5489-90); the house was ready for occupancy in 1925 or 1926; witness was with him there each year and Green was living there when he went to Lake Placid where he died

(5491); the house was considered a show place and one of the finest homes in Miami; he had water in front of his house and a wharf from which he could step into his boats, beautiful drives all around for motoring; the house was under construction more than a year and all of the rugs and furniture came from New York; the rug in the living room was a very beautiful and valuable one (5492); the house was of a Spanish type, reinforced hollow tile, with tile roof (5494).

Witness identified Fla. Ex. No. 7 as a photograph of the Green home, 46 Star Island, and said the trees shown were royal palms which had to be brought there (5494-6); Fla. Ex. No. 8 as a closer view of the same house (5497); Fla. Ex. No. 9 as a photograph of the servants' quarters (5499); Fla. Ex. No. 10 as a photograph of the house taken from the water at Biscayne Bay, showing the dock, etc. (5500-1); Fla. Ex. No. 11 as another view of the house from Biscayne Bay giving a full view of the house and servants' quarters (5502); Fla. Ex. No. 12 as another partial view of the house from the Bay—all of the trees shown were royal and cocoanut palms which were brought there after the Island was built (5504); Fla. Ex. No. 13 as an airplane view of the Island (5505); Fla. Ex. No. 14 as an airplane view from not so high an altitude (5506); Fla. Ex. No. 15 as a photograph of Green seated in his automobile at the entrance to his house—the vine shown is bougainvillea, of which Green was very fond (5507-9); Fla. Ex. No. 16 as another photograph of the residence showing the flower beds and vines (5510) and Fla. Ex. No. 17 as an airplane view of the house, showing the whole of the grounds, a portion of the dock, building for dancing, etc. (5511-12).

Witness further testified that there was nothing there except a high-class private home and that Green chose Star Island after inspecting different properties; that when he bought it, the building of the Star Island Yacht Club was on it and he tore down most of it and used a part of the foundation; he left the living room and built the house around it; that all of the palms, shrubbery and vines were furnished by the Exotic Gardens; that Green took a great interest in the gardens, roses, etc., and was replenishing and adding to them up to the time he died (5513-14); that he had a number of boats there under crew and ready to be used at all times while he was there—the "Mable G.", the "Isola Stella" and "Friday" were the main ones (5514-

15); that when he left they were put in storage at Fogal Boat Yard, Miami, in which Green was interested (5516); that Fla. Ex. No. 18 is a photograph of the "Mabel G.", named for Mrs. Green, which was always at the dock (5516-17); that Fla. Ex. No. 19 is a photograph of the "Isola Stella" that Green had built and on the stern in large letters is "Isola Stella, Miami Beach"; it was kept at the dock while he was occupying his home there (5518); that Fla. Ex. No. 20 is a photograph of a wood carving on the prow of the "Isola Stella" (5519).

The witness further testified that Green did not entertain much but had his friends come there; that Mrs. Green had several large parties there and seemed to enjoy them; they were outstanding parties; in the early years, Green was interested in boating but not in recent years; he gave a trophy for the outboard motor race (5521); the original remained in Miami and a replica went to the winner, and identified Fla. Ex. No. 21 as a photograph of the trophy (5522-3).

Witness further testified that about March 15, 1930, Colonel and Mrs. Green entertained about 300 guests and had dancing on the "Colonel," and on April 4, 1931, they gave a luncheon for 80 guests, honoring Mrs. Bartlett; in March, 1932, they gave a supper dance for 150 guests (5524); he also remembers that Mrs. Green attended a costume ball at the Roma Plaza March 31, 1932 (5527); also that on March 15, 1928, there was a marine pageant at which Green and Mrs. Green were present in the "Isola Stella" with Mayor Sewell and his family, of Miami, as guests (5528); that during the years he was living there Green was interested in numismatics and purchased a great many coins while in Miami; he was also interested in diamonds and made some large purchases of them there; he made his purchases away from home and would bring them out in cases and boxes and show them; things of this sort that he bought at Miami he would ship by express in the first few years to the Seaboard National Bank for safekeeping and in the last few years to Round Hills, where he had a vault in the basement (5529-33). Witness identified Fla. Ex. No. 22, a letter from Green, dated Lake Placid Club, New York, December 3, 1932, to J. E. P. Dunn, United States Bureau of Investigation, New York City, in which he says that his records show that on March 11, 1929, he issued a check on the Seaboard National Bank to the order of the Richter

Jewelry Co., Inc., for $340,000, which was paid (5533); that this Company is in Miami and this was an incidental purchase; that the numismatic collection was at the Star Island home in 1936 when he left for Lake Placid, where he died, and was shipped from there by the witness (5534-5).

On cross-examination by counsel for New York, witness testified that until Green began taking servants to Star Island only a skeleton force remained at Round Hills during the Winter months; after the Florida house was ready for occupancy the help was transferred back and forth (5540-1); that he was employed in Texas to work in New York and his first office was in the Waldorf-Astoria in a room attached to the Colonel's suite and several months later at 111 Broadway, where the business of Mrs. Hetty Green, as well as Colonel Green was conducted; when he was reemployed after her death, the office was at 7 West Ninetieth Street and later transferred to 111 Broadway (5542-3); when he went with Green, the latter was not interested in Texas politics (5544); after the Florida house was acquired, it was Green's regular routine to go from New York to Massachusetts, to Florida, to Texas and back to New York; he went to Marlin, Texas, for his health (5545-6); he took his personal files from place to place and they were at Lake Placid when he died (5546); the automobile that he had in Dallas in 1910 was brought to New York and thereafter he did not keep any automobile in Texas, so far as witness knows (5547); outside of certain real estate, he then had no personal property in Texas; Green was elected a Director of the Seaboard National Bank prior to his coming to New York in 1910 and attended meetings regularly until he was incapacitated about 1921 or 1922 (5548); after 1911, with the exception of the trips to Marlin for treatment, the trips to Texas made by Green were business trips (5550); the Howland house at Round Hills was in poor condition, the new addition about 150 years old could be inhabited but the portion 250 years old could not (5551); that witness went to Bellows Falls with Green to prove his mother's Will and they drove to the cemetery and Green said, "I will be buried here sometime" (5552); that Green did not come to New York from 1933 because of the pendency of a suit in the Courts there against the Directors of the Chase National Bank—he did not want to be served; between 1910 and 1913, Mrs. Hetty

Green's health seemed to be pretty good and she was at the office every day (5553-4); when witness returned to Dallas in the Fall of 1910, Green still owned the Commerce Street house but stopped at the Adolphus Hotel (5555); that during the early years of his employment, 5 West Ninetieth Street was a very nice residential neighborhood with brownstone homes (5557); that his understanding of the reason why Green did not spend six months of any year in Massachusetts was to avoid becoming a resident of that State; that Green did not say anything to him that would indicate any love or affection for his ancestors and does not know that he ever went into the old Howland house; that a portion of it was unsafe and witness was afraid to walk across the floor (5558-9); that if Keith, Green's gardener, and Z. B. Davis, the contractor, were introduced to Green in 1917, that would fix the time of the inspection they made of the Round Hills property (5564-5); but Green made a trip to Texas on the yacht in 1917 and witness still thinks it was 1916 (5582-4); that at the time of his death at Lake Placid, Green had in his room some stamps valued at about $26,000, a part of his numismatic collection and about $3,000 in money, besides his personal belongings (5566-7); he also had his own and Mrs. Green's automobile there; his stamp collection ranked with the three or four greatest in the world (5568); witness never saw him have stamps in Texas or in Florida except what he purchased from a man by the name of Neuman down there; his principal stamp collection was kept in New York at the Sherry-Netherland (5570); some years after the Round Hills house was built, the public came in and used the beach and Green did not tell them they could not do so; this continued up to the time of his death and he never heard him complain about it (5573). Witness identified N. Y. Ex. No. 210 as a photograph of the roof of the Round Hills house taken from the air and the words on the roof were in Neon lights and kept illuminated at night for several years until discontinued; they were put there on the establishment of the airport; they were not discernible from the roadway (5577-8). He also identified N. Y. Ex. No. 220 as a photograph showing one of the letters that went on the roof; they were about twelve feet high; N. Y. Ex. No. 219 as another photograph of these letters, and N. Y. Ex. No. 218 as the same as No. 220 on a smaller scale (5578-9); he further testified that the

blimps were carrying on some experiments in radio communication in connection with the Massachusetts Institute of Technology; that he wrote letters for Green's signature; in recent years Green seldom dictated a letter; he would read over the letters written by witness and if they agreed with his ideas would sign them; the correspondence received would be read by him or to him and he would give instructions (5580-2); Green was friendly with the police of Miami and New York and on Christmas Eve went down Fifth Avenue distributing gold pieces and those who missed him rang up (5586).

On cross-examination by counsel for Mrs. Wilks, the witness testified that Green was also on friendly terms with the police of South Dartmouth and contributed to the Policemen's Ball and subscribed to the program; that they were guarding the place immediately after his death (5591); that at Round Hills the files were in steel cabinets and when they left there witness carried the correspondence files with him; they also had duplicate filing cabinets at Star Island but they had no such filing cabinets in the State of New York; when witness left Round Hills, he would take his trunks with personal belongings but leave lots of things at Round Hills, where he had a pleasant room; it was the base from which he operated (5592-3); that when Green left there, he left the larger part of his jewelry collection in the vault at Round Hills and it stayed there all the year round, it did not go to Florida or New York and he did not take it around with him; the coin collection went with them (5594); Green did not maintain a library at Star Island to compare with the one at Round Hills but he had quite a number of books at Miami which remained there (5597); there were several portraits of Mrs. Hetty Green at Round Hills but he does not recall any at Star Island; the mementoes of his early days were kept at Round Hills, they did not go to Florida or New York; the paintings at 5 West Ninetieth Street came to rest at Round Hills (5599); in the latter years of his life, Green would spend from July 1st until the latter part of the year in Massachusetts, at Round Hills, a period of anywhere from there, four or five to five and one-half months, until the 15th or 16th of December, would go to New York for the holiday season, where Mrs. Green and Mrs. Stafford, who was a member of his household, liked to shop, stay there during the first week of

January and very shortly after New Years, go to Florida (5600-1); witness would have to remind him of the time he had better get out; so far as witness was concerned, his personal preference was for Florida; Green made certain that he was never in Massachusetts longer than six months; he did not seem to be anxious to get out of New York because of any particular time for staying there and left there because he wanted to go to Florida (5602-3); when he came back from Florida, he usually went to New York until the Chase Bank suit in 1933; while there, he stayed in his apartment either at the Waldorf or Sherry-Netherland without leaving, whereas in Florida he was out every day; at Round Hills he was out in his car but when he became ill and could not handle it, his chauffeur took him around in the large car; he was out there practically every day (5604); his life at Round Hills was very much of a contrast to his life in the apartment in New York City (5604); Green never attended social functions or dances; witness knew of his interest in his ancestors because he became a Son of the American Revolution, through both lines of descent (5605); during the last ten years of his life, his chief interests were aviation, experiments in fog dissipation, radio and the atom smasher—all of which found expression at Round Hills (5606). On redirect examination by counsel for Massachusetts, witness testified that it was in the later years Green was unable to go out in boats in Florida; that Mass. Ex. No. 265, a letter from Green to Captain Newcomb, Star Island, April 12, 1929, correctly states the facts where it says:

"On account of my illness and not being able to use the boats, I have made arrangements with Mr. Fogel to put them all in dry storage. Therefore, as we haven't the 'Colonel' to take care of, it having been turned over to Mr. Fogel to convert into a dance boat for a theatrical company, we will not require the services of any of the sailors or engineers. I wish you would notify them and send them back to New York as soon as you can get the boats up to the yard.

It has been such a punishment for me to go boat riding, unless I feel better I will probably put all the boats on the market for sale and, for that reason, I regret very much that I will have to dispense with your services also after this month, in which you can have the boat account, and also an extra month's pay for yourself" (5609).

From that date on Green was rarely, if ever, in the boats.

Counsel for Massachusetts gave in evidence Exs. Nos. 269, 270, 275, 281, 290 and 291, relating to the trophies given by Green (5610); No. 291 being a bill dated November 18, 1929, for one special silver trophy as per approved design Round Hill trophy $2500, and seven special silver miniature trophies $1050 (5617).

Witness further testified that during the last three years in Florida, the "Mabel G." and the "Isola Stella" were tied up at the dock and the "Friday" was not put in commission at all (5618). Counsel for Massachusetts also gave in evidence Ex. No. 164, a letter from Green to his sister November 2, 1924, regarding a visit from Rev. John Grixston Currier, of Bellows Falls, Vermont, and the inscription upon his mother's monument, in which he said that the interest on the donation would not be sufficient for the upkeep of the graves "and also the additional lot which I have reserved for myself, and also one for you, if you want it, * * * I was led to believe that you and Mrs. Bancroft had, either jointly or separately, given something to the Parish. If not, don't you think it would be a good plan to make them a Christmas present this year?" (5624-5).

Also Mass. Ex. No. 169, a letter from the Rev. Currier, Bellows Falls, Vermont, November 11, 1924, to Green, in which he says:

"Since my conversation with you on Oct. 30th I have with the assistance of the sexton discovered where your leg was buried in your father's lot in the Churchyard. It was on the North side of the monument. We made four excavations before we found it. We have been very careful to avoid any publicity in the matter and have thus far succeeded" (5626-27).

Witness further testified regarding the letter to Mrs. Brooke July 30, 1927, Mass. Ex. No. 225, that he and Green discussed her complaint and between them composed that letter, that Green took part in the discussion but not in the direct dictation; the letter expresses his ideas or he never would have signed it; he signed all letters witness dictated and always read them before signing (5630); witness stated he was confident that the first visit to Round Hills made with the Colonel was in the Fall of 1916 after his mother's death (5630); the Town of South Dartmouth, exclusive of Nonquitt and Salters Point, is an all-year-round place of resi-

dence and Green was friendly with Mr. Tiffany, Mr. Davis, Mr. Neyland, who lived there, and with Mayor Ashley, of New Bedford; that Green's friends were among the all-year-round residents rather than the residents of Salters Point and Nonquitt, he did not care much about the others; when they protested against his aviation field and broadcasting, the townspeople of South Dartmouth and New Bedford rallied to his support (5632-3); Green resigned from the Wamsutta Club after they had expelled a friend of his; he never went to any of those clubs (5634); a jeweler who sold him goods in Miami also came to sell him jewelry at South Dartmouth (5635); that the check for $100,000 on the American Exchange National Bank to the order of the Security National Bank, Tex. Ex. No. 30, was framed and on its back said, "This check saved the Security National Bank from failing" and hung in the library at Round Hills; the inscription was placed there by Green's direction (5635-6, 5642).

On recross-examination by counsel for Texas, witness testified that when he said Green had no interest in politics after 1910, he meant active interest as to political positions —not in the way of voting; he was a very staunch Republican and never registered for voting in New York, Massachusetts or Florida so far as witness knows, and continued to pay his poll tax in Texas until he was exempt at the age of 60 (5637-8); that when he said Mrs. Hetty Green was in good health the last time he saw her about 1913, he meant she was well enough to be in the office every day, although she was then an old woman; that the presence of Colonel Green relieved her of many arduous tasks she would have had to perform herself; he was affectionate and seemed to think a great deal of his mother and was solicitous of her health and welfare; she rather resented having anyone look after her—she was able to do it herself (5638-9); that on the trips to Texas, he met his friends and enjoyed the association with them while he was there and looked forward with pleasure and anticipation to seeing his friends again; both Green and the witness were pleased and happy before embarking on their trips to Texas; that witness owns a home in Marlin (5640). On further cross-examination by counsel for Florida, witness testified that it was four and a half miles to Padanaram and nine miles to New Bedford from Round Hills (5643-4); that Green in the last years of his life kept coming earlier to Miami each year and staying later (5645).

Witness identified Fla. Ex. No. 23, Green's resignation May 17, 1932, from the Country Club of New Bedford (5648), and Fla. Ex. No. 24, Lake Placid Club, New York, December 5, 1932, Green's resignation from the Wamsutta Club of New Bedford, reading: "Due to the condition of my health and the fact that I have never been able to take advantage of the facilities afforded by the Club, I desire to respectfully tender my resignation" (5650).

GERDA AUGUSTA BERGLUND (nee Larsen) of Stockholm, Sweden, testified she came to the United States in 1913 and on January 17, 1918, was employed by Mrs. Green as personal maid when they lived at 5 West Ninetieth Street; the same day they moved to the Waldorf-Astoria and she assisted in moving their personal effects; they moved no furniture; they remained in New York until June 30th, then went to South Dartmouth, Massachusetts, arriving there July 1st; witness went with them and they lived on the yacht "United States"; Green went to New York City on Tuesday night usually and returned Friday morning throughout that season (5665-6); about the latter part of October he went to Texas for two or three weeks and was in New York the rest of the Winter (5667); until July 1, 1919, they lived at the Waldorf; in May, he went to Texas and the 30th of June went to South Dartmouth, arriving July 1st; they lived first on the yacht "United States," which sank about August 21st, when Green was in New York—it was his birthday present; the Greens then went to the Tabitha Inn in Fairhaven, opposite New Bedford (5668); during the Summer, he usually spent some time around the South Wharf in South Dartmouth, where he had some boats and went to the farm at Round Hills, returning in the evening to the Inn; they had started to break ground for the house in 1919 before the sinking of the yacht; she was told that Mrs. Green was the first one to turn a shovel of dirt where the house was going to sit; Green said, "Now the first day's work is done and I am going to build a big substantial house at Round Hills and it will be staying there for many years after I am dead and gone" (5669-70); he returned to New York about the middle of October, 1919, and made his usual visit to Texas in November and came back to New York; on these trips to Texas in the Spring and Fall he went alone; in 1920,

up to the 1st of July, they lived at the Waldorf-Astoria; he made the trip to Texas that Spring and went to South Dartmouth June 30th, arriving July 1st (5671); they lived on the house boat "Day Dream", which was kept at the South Dartmouth Wharf, which Green owned; the building operations of the house were going on that Summer and had reached the second floor; they left the latter part of October; during that Summer, Green usually came down to the farm, looked over the house, shopped in New Bedford and sat around the wharf; he went to Texas alone the first of November and returned to New York about two weeks later; they lived at the Waldorf-Astoria Hotel until July 1, 1921; in May, 1921, he made his usual trip to Texas with Mr. Marshall and went to South Dartmouth June 30th, arriving July 1st (5673-4); the Round Hills house was opened in 1921 and they lived there that Summer, staying until about the middle of October, when they returned to New York; in the latter part of October he went to Texas; up to this time witness had been Mrs. Green's maid, performing the usual duties, and also helped Green in the morning, getting out his clothes and his breakfast; during these years he habitually went to his office and to the Bank while in New York, his health was very good; he had had hemorrhoids for many years and used to complain of headaches and took a number of glasses of bromo-seltzer when he came home early in the afternoon from the office or from shopping, sometimes as many as ten to fourteen from three o'clock in the afternoon until ten or eleven o'clock (5676-7).

Witness identified Mass. Ex. No. 112, a telegram from Green to her November 4, 1921, when she was with Mrs. Green and Mrs. Stafford in French Lick, Indiana, where they had gone with him on his trip to Texas and stopped while he was away (5677), and testified that shortly after his return, he was placed under the care of Dr. Pascal and in the Fall given a blood transfusion; in January, 1922, the witness went with Green and Mrs. Green to Marlin, Texas, and remained there until May, three months; he then went to Dallas for a couple of weeks; his condition on arrival at Marlin was very bad, he was not able to walk; on leaving Marlin, he walked very well; they returned to New York and on June 30th went to South Dartmouth, arriving July 1st; Green never went to New York in the Summer after they moved into the house in 1921 (5678-9); in January, 1922, Green employed witness as his personal attendant and paid

her wages; from January, 1922 until January, 1930, with the exception of a trip to Sweden in 1925, she was with him and took care of him practically all of the time, day and night, without any vacation (5680-1).

Counsel for Massachusetts gave in evidence Ex. No. 186, a letter from Green to witness December 24, 1924, enclosing a letter to the Seaboard National Bank, making a Christmas gift to her; No. 193, a telegram from Green, Miami Beach, to L. N. DeVausney, March 22, 1925, regarding transportation for Gerda; No. 216, a letter from Green to Gerda, December 27, 1926, acknowledging receipt of a cigarette box and match case; No. 277, a letter from Green "To Whom It May Concern," January 24, 1930, stating that Gerda Larsen had been in his employment as nurse for the past thirteen years and leaves on account of ill health; No. 282, a letter from W. K. Potter to Green, April 23, 1930, stating that Gerda Larsen had called that day to inquire whether he had any objection to her having her dividend checks sent to the Westminster Company to be applied on account of the amount due Green and also that she had stated that her doctor had advised her that she did not need an operation at that time (5686-94).

Witness further testified that on June 9, 1925, she went to Sweden; that during the period from 1922 to 1925, when she left, Green's condition was very good; that he would see the physician once in awhile when he came to New York (5696); he continued to suffer from hemorrhoids until Dr. Pascal operated on him in 1923; loss of blood had caused anemia; witness refused to give him bromo-seltzer when he asked for it and would take it away from him when she saw he was going to take it; on occasions she found it hidden around the house and took it away; because of that he many times threatened to discharge her and then would say, "It makes no difference how many times I tell you to go, do not leave me because I don't mean it, etc." She succeeded pretty well in keeping it away from him but when not with him or when he went to town to the drug store, he would take it (5698); in 1923, '4 and '5, he did not require any blood transfusion (5699); when she returned from Sweden in October, 1925, she saw that he had been very ill and said to him, "I see what you have done while I have been away—you have used that bad stuff again" and he said, "Well, you left me all alone" (5700); up to the time she went on

her vacation, while at South Dartmouth, he would be outdoors except when it was raining and when in the house would work on his stamps, and when he went to New York, would work on his stamps in the hotel; he could walk around the room without assistance and a couple of times went down to the Bank, but most of the time was in the room at the hotel; before [illegible], he would usually go to the matinee with the girls on Saturday afternoon but did not go after the injury (5701); their relations were very friendly and he was quite confidential with witness at times; sometimes Mrs. Green would get her to intercede with the Colonel when she wanted to have luncheon parties at the house (5702-3-4); it was not his custom to serve liquor to his guests; he did not drink himself and witness has asked him to serve liquor to his guests when he had parties on the boat in Florida (5704-5); he entertained friends from New Bedford and Texas at Miami but did not have much company and did not go out to social functions (5706); at South Dartmouth, he would talk with his guests and had a moving picture apparatus there; he would have his friends from Texas visit him there and also the girls he was educating during their vacation from school; they and Mrs. Stafford were the only members of the family party generally (5707); he took much interest in them and spent considerable time with them, watching them swim in his pool or at the beach; this continued while he was at South Dartmouth; some of Mrs. Stafford's relatives also visited there; he did more entertaining at South Dartmouth than in Florida (5709); on one occasion when they had stayed on late, around the 17th or 18th of December, he said, "I heard when I was up in New Bedford today that they were very pleased to see me down here so late, and they think I am going to stay here for Christmas, and then they think they are going to catch me, but, he said, I am going to fool them; I am going to leave before the time is up"; he used to say that he could not stay at Round Hills and had to get out of there before he had stayed there six months because he did not want to pay the taxes (5709); he told witness he had rented a room in Texas where he had a trunk and some old clothes in the trunk but he had never been in the room—had never seen it—would laugh about it (5710); on one occasion at South Dartmouth when he was telling witness about having to get out before the time was up he said, "I

am going to do like my mother, I change residences so I do not have to pay taxes, by moving around like my mother did" (5710); on one occasion witness asked him what was to become of the Round Hills house if anything happened to him and he said, "I am planning to have an experimentation station down here, but if I go first Round Hill and the house is to belong to my sister, who will then do the way she like to have it" (5711); he further said he would like to have it a memorial to the Green and Howland family so the name would live after he was gone because he was the last of the Greens; he said nothing to her about turning the house into a hospital or old ladies' home or into a museum, but he planned to build a museum down there, but she does not know whether he located any special place; that when he brought home from New Bedford some old whaling things he had bought, he said "I am going to build a whaling museum down here;" that was about the time he became interested in the "Charles W. Morgan," before the blacksmith shop was set up (5711-12); he said, "I have given Mrs. Green a lot if she like to build a house up there and have her cousins come and live there and sometime she may like to have it herself" (5712); that lot was up on the hill on the road next to Salters Point, it is a square piece, marked off, and he frequently spoke of it (5712); the last years he paid witness $200 a month and she allowed him to keep some of the money and invest it for her; she also borrowed $1,300 for her brother and paid it back partly from the interest on the securities he had given to her and identified a list of these securities signed by Green January 28, 1929, Miami Beach, Florida (5714); he also made her gifts of jewelry—rings, which she exhibited; she further testified that Green would stay up late in the evening to twelve or one o'clock, and she would remain with him and Mrs. Green would come in occasionally and talk with them but did not spend the whole evening; Green liked to work on his stamps and coins and did not want anybody to talk to him very much (5715); from 1925, when she returned in the Fall, during the years 1926 to 1930, his health was pretty good, he could walk around but in later years he did not care to walk, because his knee hurt him and he felt enfeebled walking and standing on it; he was sitting in the wheel chair most of the time and had to be wheeled about and would step from the wheel chair to the car when he was going out and again when he

returned; it was very hard for him to get into boats and easier to get into automobiles (5716-17); Green told witness Round Hills was the property he got after his mother's death, that it belonged to the family for many generations from the early days of the settlement, that he had played as a boy in the old homestead and he would like to make it a nice place, that his sister did not like to have the large place and that it was better for him to incorporate it and she would take the Bellows Falls house (5717); he told her there were two homestead places, one in Bellows Falls, which belonged to the Greens and one at South Dartmouth that belonged to the Howland family, and that when his mother died he had a conversation with his sister and as a result he took Round Hills and Mrs. Wilks got Bellows Falls (5718-19); that he never told her he was going to Texas to live; he said he was collecting the whaling implements because that was where his family made the first money (5719); on the walls at Round Hills he had paintings of his mother, and of his grandmother and a picture of the Captains of the Stone Fleet, a group of Captains of the whaling vessels, and several other whaling pictures; he did not have any family portraits at Star Island; sometimes he would say, "I went by the house my mother was born in today" (5719-21); that he used to go shopping and buy clothes for the young girls that he was interested in and for witness and Mrs. Green, and had blank order forms for the young girls (5721-22).

Witness identified Mass. Ex. No. 376 as one of the blanks which Green used to buy clothes for the girls when they were at school and the same was given in evidence (5723).

Witness further testified in the years 1918 to 1921 when the construction work was going on, Green would be out every day except when it was raining; that Mrs. Wilks visited Round Hills twice while witness was there, on one occasion staying four or five days and another time a couple of days; she never visited Star Island while witness was there (5729); that Green started to buy jewelry in Miami in 1926 and kept it in the safes until it was shipped to the Chase National Bank; that he took a few boxes of rings with him from Florida to Round Hills but most of it was stored in the Chase Bank which witness packed for shipment in 1929.

On cross-examination by counsel for Texas, the witness testified that in January, 1922, she began to take care of the

Colonel like a child and continued up to the time she left in January, 1930, and that such attention was necessary—in the morning gave him a massage and sometimes also at night, dressed and undressed him, because sometimes his arthritis was so bad he could not use his hands (5742-59); that she gave him undivided attention to such an extent that she almost had a nervous breakdown in 1930; there were periods when he did not sit in a chair because he was not feeling good and there were other periods when his health enabled him to get into the chair himself (5760); he said the doctors had told him to go South in order to keep his health; in those later years he had rheumatism or what you would call chronic arthritis; he said, in effect, that he followed the sun (5763-4); that when he told her he was going to fool some folks in New Bedford and move out of there at a certain time, he laughed and told her he was not going to be a resident of Massachusetts (5765-66). On cross-examination by counsel for New York, the witness testified that Dr. Pascal told her bromo-seltzer was bad for the Colonel and to try to prevent him from taking it (5764); that he did not work on his stamp collection at the Sherry-Netherland, he was interested in coins then (5767); that Green told her of his room in Terrell, Texas on several occasions (5769).

On cross-examination by counsel for Mrs. Wilks, the witness said the dining room in the Sherry-Netherland was occupied as an office by Mr. Marshall and the family ate in Mr. Green's big room, where he had a desk and safes (5771); in 1921 and 1922, the servants at Round Hills stayed all year, after 1925, when they began going to Florida, they came back and forth (5772); Green said that he would like to stay at Round Hills as long as he could but could not stay longer than six months (5773); during all the time she was with him, Green's mind was all right, he was the boss at Round Hills, and when it came to going anywhere he made the decision (5774); during all the time she was there he had only one leg and after 1921 he got water on the knee of the other leg; it was always difficult for him to dress himself and witness helped him to dress before he got water on the knee—the help she gave him was in every day things like getting his clothes on and off; he had no difficulty in seeing any one he wanted to during the period she was with him (5776-7).

On redirect examination by counsel for Massachusetts, witness testified that if she used the word "incorporate" in connection with Round Hills she must have used the wrong word; Green said he was building the house there and would like to make a nice show place of his old home place and he was going to live there (5780); that when he said he did not want to be a resident of Massachusetts he also said he did not want to be a resident of New York or a resident of Florida (5781); that he did not take twelve or fourteen bromo seltzers every day but only the days he had a headache and sick stomach (5782).

On further cross-examination by counsel for Florida, witness testified that Green said he did not want to become a citizen of any place saying, "I don't want to be a resident of New Bedford, or South Dartmouth, or Florida or New York," but she cannot fix the year (5782); that when he took bromo-seltzer he was in bad humor and would get angry with the least little thing; he had a habit of concealing bromo-seltzer about the room, went to New Bedford to get it and did the same thing in Florida when they tried to keep it from him at home (5784).

Wilbur K. Potter, on being recalled by counsel for Massachusetts, submitted a statement prepared by him of the capital expenditures and expenses of the Green property at South Dartmouth from 1917 to 1936, inclusive, compiled on the same basis as Fla. Ex. No. 5, and said statement was given in evidence as Mass. Exs. Nos. 410, 410-A-B-C (5804-14); he further testified that the statement did not show all the radio expenses before 1924, when they started their capital account, and that such expenses were charged to Green personally; the same is true of the construction expenses for the radio station. Said statements are as follows:

"Massachusetts Exhibit No. 410

E. H. R. Green's Property, South Dartmouth, Mass.

	Round Hills Farm		Round Hills House	
Year	Expenses	Principal	Expenses	Principal
1917	$365.13	51,076.60		
1918	19,633.04	303,642.86		
1919	67,205.63	96,929.36		164,021.54
1920	53,222.74	71,640.34	2,595.50	589,732.61
1921	136,167.95	45,505.31	59,456.54	221,569.27
1922	160,394.09		64,108.20	
1923	219,963.06	42,286.35	53,584.13	10,000.00
1924	294,800.32	3,046.62	51,018.87	
1925	324,578.48		92,940.16	
1926	230,353.13		67,707.64	
1927	127,601.85		65,383.13	
1928	106,317.91		66,802.16	
1929	89,320.44		69,262.43	
1930	79,834.76		48,264.32	
1931	72,691.39		53,798.96	
1932	68,211.63		48,154.27	
1933	65,625.62		62,197.65	
1934	61,224.57		54,575.85	
1935	63,063.07		51,982.52	
1936	28,819.35		11,205.56	
	$2,269,400.16	$616,127.44	$924,037.89	$785,323.42"

"Massachusetts Exhibit No. 410-A

E. H. R. Green's Property, South Dartmouth, Mass.

	South Wharf		Round Hills Radio
Year	Expenses	Principal	Expenses
1918		$76,855.33	
1919	4,542.93	44,048.80	
1920	7,890.43	10,013.93	
1921	20,845.99	2,396.71	
1922	18,514.44		
1923	8,225.51		
1924	8,439.80		
1925	8,469.57		34,806.68
1926	8,490.24		58,552.41
1927	9,388.42		48,151.31
			287,732.79

Year	South Wharf Expenses	South Wharf Principal	Round Hills Radio Expenses
1928	8,509.56		310,100.06
1929	9,061.33		505,432.08
1930	8,371.81		90,325.87
1931	8,783.77		29,842.70
1932	6,757.63		28,841.17
1933	8,369.15		28,943.92
1934	9,788.22		42,363.64
1935	11,272.67		41,000.73
1936	4,711.18		18,366.95
	$170,432.65	$133,314.77	$1,524,460.31

Machine Shop, South Wharf

1920	$65,487.00
	170,432.65
	133,314.77
	1,524,460.31
	$1,828,207.73
	65,487.00
	$1,893,694.73"

"Massachusetts Exhibit No. 410-B

E. H. R. Green, Whaling Enshrined

Year	Expenses
1926	$11,407.80
1927	9,876.65
1928	11,487.31
1929	12,920.01
1930	14,269.16
1931	22,914.19
1933	14,289.10
1934	8,320.56
1935	14,203.03
1936	7,016.04
	5,729.09
	$132,432.94"

"Massachusetts Exhibit No. 410-C

E. H. R. Green's Property, South Dartmouth, Mass.

Year	Expenses	Principal
1919		$27,468.97
1920		19,183.52
1922		17,524.91
1923	1,222.98	
1924	222.59	
	$1,445.57	$66,177.40"

(5809-13.)

Witness also testified that he had prepared a statement of the capital account of the Round Hills House, the Round Hills Farm, the South Wharf property, the Machine Shop, and the so-called hotel at Round Hills and same was given as Mass. Ex. No. 411 (5818-30). The details of the principal items indicated thereon are as follows:

"Massachusetts Exhibit No. 411

Round Hills House—South Dartmouth

Capital Account

7/16/19 to 2/15/23 $785,323.42

Round Hills Farm

10/5/17 to 2/11/24 $616,127.44

South Wharf Property

10/10/18 to 1/13/21 $133,314.77

Machine Shop—South Wharf

10/25/20 to 12/21/20 $65,487.00

Hotel—Round Hills

9/23/19 to 12/6/22 $66,177.40"

Witness further stated that the first voucher for the work at Round Hills was October 5, 1917 (5831) and that the total expenditures for the South Dartmouth property as shown

upon Mass. Exs. Nos. 410 and 410-A-B-C is $6,688,639.55 (5832).

The witness thereupon examined and identified Mass. Ex. No. 66, a blank book marked "Abstract" from the files of Colonel Green, as containing annotations in his handwriting and certain writing of his mother (5833) and stated that on pp. 30-31 there is what purports to be a description of Round Hills Farm followed by writing of Mrs. Hetty Green (5835-43).

Counsel for Massachusetts gave in evidence Mass. Ex. No. 67, a letter from Green to his mother, August 22, 1893 (5845), reading:

"I am 25 years old today. I think you might send me money so I could go the Fair at Chicago in about two weeks before the fall rush comes. It would only cost about 200 00/100 dollars. I can get Passes to Chicago and return let me know as soon as you can so I can get ready I want to see the Fair so bad. Please let me go."

T. W. Chrystie, Special Administrator, recalled by counsel for Massachusetts, identified an album of photographs of the Round Hills Estate, South Dartmouth, taken in connection with an insurance survey made by an Insurance Company for the Estate and stated they contained all the buildings at Round Hills and the South Wharf property, with some minor exceptions, a total of 60 structures (5854). In response to questions by counsel for New York, he said the old Howland house was not numbered in the photograph and was unidentifiable. The album was given in evidence as Mass. Ex. No. 412 (5856).

Oscar Carlson, of New York City, testified that he was employed by Green June, 1928, as a second man and afterwards as butler until the Round Hills house was closed December, 1936 (5858); that his duties were to bring Green's coffee at seven o'clock, serve him his breakfast and sit with Green until his nurse came, press his clothes, serve his lunch, take him downstairs in the wheel chair and meet him when he came back because he could not walk from the car, sometimes dressed him when the nurse was off and sat with him so he would not be alone; that he

spent many hours sitting with him (5859); in their conversations, Green told him that the estate had belonged to his family since back in the Sixteenth Century; that his grandfather was a Captain of a whaling ship, told him whaling stories and said the famous fortune was founded in whaling and the whole city depended on that industry; that he had a whaling ship now in memory of those days; advised him to read a book in his library on the Howland heirs (5860); he said that his mother brought him up there when he was a young boy to see the place and that the house where his mother was born was in New Bedford; he had pictures of it in his library which witness has seen (5861); Green went to Marlin, Texas, in 1935 and when he came back witness met him on the porch and he said "Gosh, it feels good to come back again"; witness used to talk to him about going back and he said "if I go back to the old country it would not be the same as many years ago because many years have passed," and asked him if the place was like the same and he said, "Ah, that's gone for me" (5862); Green said he didn't stay at South Dartmouth longer because of the cold weather; that he liked to go to Miami in the Winter because it was warm and the Winter is cold and dreary at Round Hills because it is so near the water (5862-3); when he asked him his reason for not staying more than six months, he said that by going down to Florida and not staying six months in Massachusetts he saved in taxes as much as it cost to run all the places if he had stayed (5863); Green spent much time at South Dartmouth reading the books he had there; he did not have a library in Florida but had a few books on shelves (5863); he opened the beach at South Dartmouth because he liked to see the people; he did not want to be alone; instead of going to New Bedford he would rather have the people come out to see him; he had a lot of friends and when he parked his car a lot of people came to see him and saved him going to New Bedford; he seemed to be very proud of the place because he built it himself (5864). On cross-examination by counsel for Texas, witness testified that Green told him that his Grandfather Robinson was a Whaling Captain and sailed out of New Bedford; showed him a picture of the house where his mother was born, now a sort of Catholic Home (5864); before he got sick, he liked to have people come out and talk with him, although he did not like company; the last few years he seemed to prefer

to be alone and did not want to see anybody except the doctor unless it was on urgent business; he was confined to his room mostly in the last few years; sometimes he would stay in bed until one o'clock, then would get into the wheel chair and go downstairs if he was going out; the last few years he didn't go out so often and didn't seem to be able to enjoy talking to people because he could not concentrate (5865-6); he mostly read books on numismatics and liked to look at the magazines and monthlies; he had a stamp collection and was interested in new books about them (5868); Green took great pride in the fact that he had operated the Green Floral Nursery and said that it was the finest nursery in the South and that he had made a profit when he sold it; told witness that he was President of a Railroad in Texas and owned thousands of acres down there worth about $1.00 an acre; he said he had worked down there for $40.00 a month on his first job (5869-70).

On cross-examination by counsel for Florida, the witness testified that he was born in Stockholm, Sweden, was butler for Green in Florida; that in 1935 and 1936 Green did not go out every day but stayed in his room; prior to that he would go out riding in the afternoon practically every day when the weather was nice (5875); he had three boats at the dock ready for use; the last three years he didn't go boating; in 1933 and 1934, he might have gone out two or three times in the Winter in his boats (5876); he went out in his automobile every day but the last couple of Winters he went out only two or three times a week (5877); the Star Island house was one of the most elaborate there but witness would not brag about the furniture, although it might have been valuable (5879); he does not know whether the furniture was made to fit the rooms or the tile made for the mansion house because it was before his time; the gardens were nicely laid out and it was one of the best places on Star Island (5879-80); Green was living in Florida when he went to his death bed; he then had about 22 servants in the house; the last few years he had only one automobile and Mrs. Green had one and there was a Ford for the chauffeur (5880-1); at both Round Hills and Star Island he used to see people when he was out but very seldom had anyone come to see him in the house (5881); in the last few years at Round Hills he did not go out when it was foggy or raining; when they were building the airport he would be out in any kind of weather (5882).

Thereupon counsel for Massachusetts gave in evidence the following Exhibits:

No. 68, deed dated April 23, 1913, from Nathaniel Howland, etc., to F. William Oesting, of New Bedford, of a tract of land on the West Shore of the Apponegansett River (5892-3).

No. 73, letter dated April 17, 1918, from Green to Henry M. Plummer, of New Bedford, about the complaints of the people of New Bedford and South Dartmouth regarding the improvement of Round Hills Farm (5895).

No. 75, letter dated New Bedford, August 30, 1918, from the Davis Corporation to Green regarding the analysis of spring water (5897-9).

No. 76, deed of Tiffany, Davis and others, Trustees of the South Wharf Trust, to Green, of Terrell, Texas, conveying certain land and buildings in South Dartmouth adjacent to land of the New Bedford Yacht Club, dated October 24, 1918 (the wharf in Padanaram Harbor, where the "United States" sank) (5899-5900).

No. 83, letter from Green, June 10, 1919, enclosing a check for Tercentenary Membership in the New England Historic Genealogical Society (5901-2).

No. 84, photostat copy of agreement dated June 12, 1919, between Hitchings & Company, contractors, and Green, of New Bedford, Massachusetts, for the erection of a greenhouse (5902-6).

No. 85, agreement June 26, 1919, between the R. H. Howes Construction Company, New York City, and Green, of Terrell, Texas, for the construction of a residence and appurtenances at South Dartmouth, Massachusetts, in accordance with drawings and specifications prepared by Alfred C. Bossom, to be completed within twelve months, for the contract price of $424,800 (5908-19).

No. 91, memorandum dated October 15, 1919, from W. H. M. (Marshall) to Green of a message regarding lilacs (5919).

No. 92, letter from Alfred C. Bossom, architect, to Green November 24, 1919, regarding utilization in the South Dartmouth house of the plumbing fixtures, etc., from the yacht "United States" (5921).

No. 93, letter to Green from Henry L. Tiffany, New Bedford, March 19, 1920, regarding the sale to him of the Howland Farm (5924).

No. 94, another letter from said Tiffany to Green March 22, 1920, reporting progress and requesting his check (5926-7).

No. 95, letter from Green to Tiffany, March 24, 1920, enclosing check for part purchase price of the Howland property (5928).

No. 96, letter from Tiffany to Green acknowledging the same March 26, 1920 (5930).

No. 96-A, Tiffany's receipt to Green for $10,000 March 26, 1920 (5932).

No. 97, deed dated March 31, 1920, from Violetta E. Oesting and others to Robert A. Terry, of land on the Apponegansett River and

No. 98, another deed between the same parties conveying an interest in the same property, March 31, 1920 (5932-3).

No. 99, letter from Green April 30, 1920, to Lee, Higginson & Company, Boston, enclosing check for $700 for the Pilgrim Tercentenary Memorial Fund of the New England Historic Genealogical Society, to establish a memorial in the name of Hetty Howland R. Green (5934-5).

No. 100, photostat of certificate May 5, 1920, in the name of Edward H. R. Green, of Terrell, Texas, for 100 shares of the West Shore Trust under certain deed of trust May 5, 1920, recorded in Bristol County, Massachusetts (5935-6).

No. 101, deed from Charles S. Ashley and others, bearing the signature of Green, dated May 5, 1920, covering certain real estate in South Dartmouth held by the West Shore Trust (5937-50).

No. 102, deed from said Ashley and others to Robert A. Terry in connection with the West Shore Trust May 5, 1920, containing a reservation of the Nathaniel Howland family burial ground (5950-1).

No. 105, letter from Frank C. Taylor, general contractor, January 18, 1921, to Green submitting a proposal for protecting the shore line at the Round Hills property (5952-3).

No. 106, letter from said Taylor to Green March 14, 1921, regarding building a sea wall at Round Hills, and No. 107, letter to said Taylor from Green March 17, 1921, acknowledging same and stating he expected to be at South Dartmouth before very long (5954-6).

No. 108, photostat of letter form addressed to the Corresponding Secretary, New England Historic Genealogical Society March 19, 1921, from Green accepting the election to membership and enclosing genealogical data;

"Edward Howland Robinson Green

Birthplace: London, England.
Full date of birth: August 22, 1868.
Present legal residence: Terrell, Texas.
Post Office address: 111 Broadway, New York City.
Your Father's name in full: Edward Henry Green.
His birthplace: Bellows Falls, Vermont.
Full date of birth: February 6, 1821.
Your Mother's Maiden Name, in full: Hetty Howland Robinson.
Her birthplace: New Bedford, Mass.
Full date of her birth: November 21, 1834.
Her Father's name in full: Edward Mott Robinson.
Her Mother's maiden name, in full: Abby Slocum Howland" (5959).

No. 109, letter from J. Edward Harris Co. to Green April 7, 1921, submitting proposal for remodeling the old Howland House (5961-3).

No. 111, letter from Alfred C. Bossom, architect, to Green July 1, 1921, thanking him for certain architectural books that he had given him and stating:

"Now that your building is practically finished, if you will allow me, I would like to state it has been an exceedingly great pleasure on my part to handle this work for you * * *. I am sure I will only be repeating what you must have heard many, many times before that I frankly never met anyone with such a fund of accurate information" (5964-5).

No. 113, letter from Green, Marlin, Texas, April 19, 1922, to Francis Hart, Boston, in which he said:

"The spring weather has made me commence thinking of going to Round Hills for the summer. If you will remember, we had some conversation last summer in regard to radio and wireless telephone. At that time you suggested that I do nothing, as some of your friends were perfecting outfits for receiving and sending. The craze has struck Texas, where I am temporarily located on account of Rheumatism in my right knee, and I desire to install at Round Hills the best outfit I can possibly get. If it is not asking too much, I would appreciate your advice as to what kind of a set I should secure. I want to furnish as much amuse-

ment as possible for my guests and neighbors during the coming summer" (5966-7).

No. 115, letter from Green, Waldorf-Astoria, June 2, 1922, to Warren Bartlett, of the Auto Selling and Supply Co., New Bedford, ordering a Buick Sport Roadster to have the initials "R. L. L." (5969).

No. 116, letter from Green, New York City, June 9, 1922, to George Anthony Hough, Managing Editor, The Standard, New Bedford, advising him that he had made a contract with the Western Electric Company for radio broadcasting station at Round Hills which will enable any set within 100 miles of New Bedford to hear the program and that during the Summer months they will be able to give an entertainment equal to any in the country for the benefit of their New Bedford friends (5972).

No. 118, letter from Green June 12, 1922, to H. E. Hobson, Assistant General Manager, Southwest General Electric Co., Dallas, Texas, on the same subject, in which he says this "will probably be one of the first relaying stations outside of their New York office" and will be owned by the Round Hills Radio Corporation (5973).

No. 119, letter from Green June 15, 1922, to the Brunswick-Balke-Collender Co., New York City, on the same subject, inquiring whether it will be possible to secure Brunswick records for broadcasting previous to the time they are placed for sale, in which he says:

"As stated before, this broadcasting station is to be located on my private estate and no advertising matter whatever will be broadcast" (5975-6).

No. 124, letter from Newson & Company to Round Hills Radio Corporation, July 6, 1922, giving permission for the broadcasting of stories from the book "Folk Lore from Foreign Lands" (5979).

No. 128½, letter from Green to Frank M. Corlett, of The American Radio Relay League, Dallas, Texas, November 27, 1922, of his experience and interest in broadcasting, in which he says:

"For instance, last night in my residence at South Dartmouth, near New Bedford, Mass., we heard Atlanta, Ga. perfectly.

* * * * * * *

Any movement started in Dallas with a view of establishing a high-class broadcasting station, contemplating not only the initial cost of the station, but also an assured source of revenue necessary for its maintenance, will have my hearty cooperation and some small financial assistance (5981-5).

No. 130, letter from General Electric Company, Schenectady, January 8, 1923, addressed to Round Hill Radio Co., asking whether certain numbers were broadcast on certain days (5985).

No. 131, letter January 18, 1923, from the Round Hills Radio Corporation to the Second Operator, Steam Ship "President Fillmore" thanking them for the advice that their concert from Massachusetts was heard in the English Channel and stating:

"Your letter was particularly interesting to us for the reason that it is the first advice we have had that we are reaching Europe" (5988-9).

No. 133, letter January 25, 1923, from General Electric Company to Marshall, Green's secretary, in which it is stated:

"It is very evident that your broadcasts were heard clearly on the other side of the Atlantic" (5991).

No. 134, letter from Green, as President of the Round Hills Radio Corporation, to A. Shaw, England, February 7, 1923, regarding the broadcast from South Dartmouth which was heard in England (5994).

No. 135, letter February 7, 1923, from Green, as President of the Round Hills Radio Corporation, to the General Electric Company thanking them for their previous letter, No. 133 (5996).

No. 136, letter to Green from Pierce & Barreau, February 20, 1923, regarding payment for completed broadcasting room, etc. (5998).

No. 137, Green's reply enclosing check February 22, 1923, for $2,000 (5999).

No. 138, letter from Green, Jacksonville, Florida, April 30, 1923, to Broadcasting Sales Engineer, Western Electric Company, requesting them to furnish a receiving set not later than May 15th, "at which time I expect to be returning from the South on my way to South Dartmouth" (6000).

No. 141, letter from the Secretary of the Country Club of New Bedford, August 9, 1923, to Green advising him of favorable action upon his application for membership for himself, Mrs. Green and two guests, and No. 141-A, official notice from the Club, and No. 141-B, relating to same subject (6002-9).

No. 284, letter from Green to William M. Emery, Transcript Office, Boston, regarding a book concerning Mrs. Hetty Green, in which he says:

"It pleases me to learn that the people in New England who have communicated with you do not sanction the scathing remarks these two unauthorized men have made of my mother" (6020-1).

No. 142, certificate of incorporation of the Round Hills Radio Corporation August 15, 1923 (6022).

No. 143, telegram from Green August 25, 1923, to Joseph J. Johnston regarding broadcasting station of the Round Hills Radio Corporation, in which he says, "Ours is largest broadcasting station in New England" (6024).

No. 144, bill paid by Green for stationery sold Round Hills Radio Corporation (6025).

No. 146, letter from Green, Jacksonville, Florida, January 28, 1924, complaining of non-completion of work on house boat "Colonel" to be "used in Southern Florida during the months of January, February and March" and stating:

"Upon receipt of your wire that the boat would be ready, we packed up and came on. We have been here now three weeks and the cold disagreeable climate is not helping my health any" (6026).

No. 147, letter from Round Hills Radio Corporation June 23, 1924, to The Standard, New Bedford, Mass., enclosing program of radio broadcast commencing July 1st, 1924 (6027).

No. 149, letter to Green July 8, 1924, regarding broadcasting program of the Convention (6028).

No. 150, letter from Green July 28, 1924, to American Optical Company inquiring about a telephoto lens, in which he says:

"Our studio is located 1700 to 200 feet from Dumping Lighthouse, and the East shore buoy is 300 feet East of the

Lighthouse. This inquiry is to ascertain whether you have on hand, can make or know where we can obtain a telephoto lens which will increase the size of the image on the plate, and whether you have a lens in stock that will cover an 8x10 plate. The movement of the boats through this passage cross your view horizontally about 1700 feet from where the camera is located, at the rate of about seven miles per hour. This would require almost an instantaneous picture" (6029).

No. 151, letter from Green July 30, 1924, to American Optical Company on same subject (6030).

No. 152, letter from Green, President of the Round Hills Radio Corporation, July 31, 1924, regarding the purchase of two Century Studio Cameras, films, etc. (6032).

No. 153, letter from Green to Harry Neyland, New Bedford, regarding preservation of the whaling ship "Charles W. Morgan," in which he says:

"I have given the matter considerable thought and have concluded that, for sentimental reasons, this particular whaler, the 'Charles W. Morgan', should be preserved, not only for the pleasure that we of the present day would derive from seeing one of the 'old timers' still with us, but as a historical heirloom for the generations to follow us. In passing, I may state that, as you are probably aware, my grandfather and others were the owners of this ship many years ago.

My understanding is that you have attempted to secure the cooperation of the City of New Bedford and its citizens in the laudable cause of preserving this ship and if it can be accomplished in this way, I shall be delighted to contribute $500.00 toward that end. If, however, the City of New Bedford and its citizens do not evidence sufficient interest in the perpetuation of her memory, I am willing to make you and her co-owners the following proposition, after, of course, giving those interested a reasonable time to decide:

If nothing is done by the City of New Bedford and its citizens, and the boat can be turned over to me by October 15th, 1924, at 12 o'clock noon, I am willing to take her over" (6033-4).

No. 155, letter from Green, October 13, 1924, to Brentano's, ordering "John Smith's Travels", containing a

chapter about Bartholomew Gosnold's Settlement at Cuttyhunk and asking them to locate a work by Gosnold (6035).

No. 156, letter from Green, October 16, 1924, to Baker and Co., New York City, ordering certain books, in which he says:

"I am endeavoring to locate some authentic history regarding the voyage made by Bartholomew Gosnold, an Englishman, in 1602. He established a colony on the island now known as Cuttyhunk, off the coast of Massachusetts. I would also like to secure any books you may have concerning old Dutch Windmills built in the United States, especially around Rhode Island and Cape Cod. Please make shipment by express to the following address" (6036-7).

No. 157, letter from Green, October 20, 1924, to Thomas Perkins, Boston, ordering certain books and etchings to be sent to Round Hills, relating to the maritime and whaling industry; also the "History of Old Dartmouth, by Ricketson" (6037), and No. 158 and No. 159, correspondence relating to the same subject (6039).

No. 160, letter from Green to William A. Mansell, Boston, October 24, 1924, regarding the purchase of a set of private signals of all whaling vessels which sailed from New Bedford (6040).

No. 161, letter from Green, October 25, 1924, ordering certain books relating to the early history of New Bedford and South Dartmouth, and full set of the House Flags of the whaling vessels, etc. (6041).

No. 162, letter from Green to Thomas Perkins, Boston, October 30, 1924, ordering a copy of book relating to Gosnold's voyage "to these shores in 1602" (6042).

No. 163, letter from Green, October 31, 1924, to Ernest Dressel North, New York City, asking him to secure a copy of the oldest dated copy obtainable of Gabriel Archer's account of Gosnold's voyage (6042), and Nos. 165, 166, 167, 168, 170 and 171 correspondence showing the purchase by Green of rare books, etchings, etc., relating to this subject, especially books relating to whaling, the early history of Massachusetts and New England genealogy (6043-50).

No. 173, copy of letter from Green, South Dartmouth, November 15, 1924, to John F. Lubben, Secretary, Dallas News, declining to subscribe to the Texas Almanac and State Industrial Guide for 1928, "inasmuch as conditions

have changed materially since 1914, I am not now in a position to take the same action I did then in regard to subscriptions for the Almanac" (6051).

Nos. 174 to 184, correspondence with Green relating to the purchase of rare books, prints, etchings, etc., relating to whaling and the early marine history of Massachusetts, New England, etc. (6051-62). In No. 183, a letter to Ernest Dressel North, December 6, 1924, Green said:

"For your information, I will say that at this time I am interested particularly in anything that relates to the history of whaling, such as old whaling lists, old Lloyd's Registers, or bound volumes of old newspapers which contain whaling lists. The museum I am establishing relates only to whaling and old Massachusetts" (6062).

No. 185, letter from Green, New York City, December 23, 1924, to the Rev. John G. Currier, Bellows Falls, Vermont, regarding inscription on the monument to his mother, enclosing check for upkeep of burial lot, in which he says:

"As you suggest, my sister and I think that the lot with the old tree would be the most preferable. Therefore, if this lot can be made or so shaped as to furnish four graves, it will be perfectly satisfactory to Mrs. Wilks and myself; or if sufficient from the lot now assigned to us can be added to the tree lot to make room for four graves, then we would have no future use for the lots now assigned to us" (6063-4).

No. 187, copy of letter from W. P. Allen, Terrell, Texas, to Green, New York City, January 9, 1925, in which he says:

"Now, as to the poll tax matter, the time is growing short and I am herewith enclosing you an order for a poll tax receipt for you and Mrs. Green, and if you want me to pay this, kindly sign and fill in and return to me, so that I will receive them on or before Jan. 31st" (6066-8).

No. 188, telegram from Green to Allen, January 16, 1925, stating:

"You failed to enclose order for poll tax receipt. Send one for myself and the Mrs." (6069-70).

No. 192, letter from Green, Star Island, to Harry Neyland, February 27, 1925, regarding the "Charles W. Morgan" (6070).

Nos. 195 and 196, correspondence in April, 1925, relating to his election to the Old Dartmouth Historical Society (6070-1).

No. 197, letter from Green, Marlin, Texas, April 27, 1925, to William M. Emery, Fall River, Mass., in which he said, among other things:

"We just arrived in Marlin and am in receipt of your letter of April 21st. I hope to get back to New York about May 23rd. They are putting me through a course of stunts here that lasts from 7:15 in the morning until after one o'clock every day, which leaves me weak and all I want to do is to sleep every afternoon. Have not been out of the hotel since our arrival. My leg and arms pain me considerably, which is due to the violent exercise and treatment they give me. This will last twenty-one days and I cannot predict whether or not I shall be better" (6072).

No. 198, letter from Green to said Emery, June 9, 1925, in which he says:

"I am in receipt of your favor of the 8th instant, enclosing the memoranda on my ancestors who rendered notable service in Massachusetts and Rhode Island in the Colonial period, for which I thank you" (6073).

Nos. 199 and 200, relating to radio broadcasting in 1925 (6073-5).

No. 201, letter from Green to Thomas Perkins, Boston, ordering miscellaneous books, etc., relating to whaling and marine history of New England (6076).

Nos. 202, 203 and 204, correspondence indicating Green's interest in Massachusetts, etc. (6077-8).

No. 205, letter from Green, May 5, 1926, Marlin, Texas, to John M. Bullard, New Bedford, regarding the taxation of his broadcasting experimental station, the "Charles W. Morgan," etc., in which he says:

"I expect to be here in Marlin for the next thirty days, or until about the time of June, when I shall start trying to migrate back to 'The Land of the Pilgrim Fathers'" (6080-2).

No. 208, letter from The Collectors Club, New York City, August 12, 1926, to Green, acknowledging his letter of August 7th and stating that the bill to him as life member

was sent through inadvertence, and the assessment was levied on resident members only (6083).

No. 209, invitation to John M. Bullard to the dedication of the Whaling Memorial July 21, 1926, signed by Green, "Life Trustee" (6084).

No. 210, letter from Green to his sister, October 8, 1926, advising her regarding investments in New York real estate, in which he said, among other things:

"You will remember that our houses at 5 and 7 West 90th Street were considered to be worth in 1870 very nearly $40,000 each, upon which we had to take a mortgage for $25,000. We had to keep the properties because we could not get the original cost price out of them. • • •

I am glad you were pleased with the Green Wing at Poughkeepsie" (6085-7).

No. 212, letter to Green, November 13, 1926, from Amelia H. Jones making an appeal for subscription to the Welfare Campaign for New Bedford's benevolent societies, and No. 213, her acknowledgment to him, November 23, 1926, of the receipt of his check for $2,000 for the New Bedford Community Fund (6087-90).

Nos. 214 and 221, letters relating to donations to New Bedford and South Dartmouth (6090).

No. 224, letter to John H. Levi, President, The Miami Ocean View Company, July 26, 1927, stating he was tied up with building an airport on Buzzard's Bay and putting all his loose cash in that; therefore could not consider purchasing additional lots on Star Island (6092).

No. 226, letter to John M. Bullard, South Dartmouth, August 17, 1927, from Harry A. Bennett reporting that the Board of Selectmen, at their regular meeting August 5th, recorded themselves in favor of the landing field and airport Green contemplated constructing at Round Hills, etc. (6092-3).

No. 227, certificate dated September 12, 1927, that Edward H. R. Green of Terrell, Texas, is entitled to 50 shares of the West Shore Trust, signed, among others, by Charles S. Ashley, New Bedford, Mass. September 12, 1927 (6094).

No. 229, life membership card issued to Green in the New Bedford Port Society for The Moral Improvement of Seamen (6095).

No. 230, member's ticket issued to Green 1931, New Bedford Yacht Club.

No. 231, receipt dated Boston, Mass., August 4, 1927, to Green for $1,000 given by him to the U. S. Junior Nautical Training Schools, Inc., and No. 231-A, letter to Green, October 26, 1927, expressing their appreciation of his membership, etc. (6096-7).

No. 232, paid bill of the Wamsutta Club, New Bedford, Massachusetts, for dues to March 1, 1933 (6097-8).

No. 240, letter from Green, May 17, 1928, to Henry Chapman, Philadelphia, Pa., in which he says:

"I am leaving here in a few days for New York, but during my short stay there will not have time to go into anything in the Numismatic line. I am sending all your shipments direct to South Dartmouth, where I shall be after July 1st, and will then be in a position to go over everything you have sent me" (6098).

No. 241, letter from W. P. Allen, Terrell, Texas, May 19, 1928, to Green stating:

"I have been expecting you down in Marlin for the last month, but the time is so late I don't think you are coming this year.

* * * * * * *

The Midland passed into the hands of the Southern Pacific on April 1st; * * *

I am enclosing you a coin that a mutual friend of ours 'Kirby Orr' gave me yesterday to send to you. I presume that it is the work of some artist, but whenever I see a strange coin I think of you.

If I had known you were not coming to Texas I would have run down and spent the week end with you, but I hope to get up to see you this summer and see how the airport is coming along. The new owners of the Midland elected you President, and much to my surprise elected me Vice President, so I guess I can still ride free" (6099-6103).

and No. 242, Green's reply of May 23, 1928, in which he says:

"I received your letter of the 19th and enjoyed it. * * *

We are leaving for New York tomorrow and I will be at the Waldorf until July 1st" (6105-6).

No. 243, letter, June 11, 1928, from Green to William M. Emery, Transcript Office, Boston, reading:

"I am this morning in receipt of a very good photograph of the old Gideon Howland House in New Bedford from you, for which please accept my sincere thanks" (6106).

Nos. 244 and 245, correspondence between Green and John M. Bullard, New Bedford, July 24-25, 1928, regarding changing the annual meeting of Whaling Enshrined Incorporated to July 21st, the birthday of the old whaler (6107-8).

No. 246, letter from Miss Elizabeth Watson, New Bedford, August 28, 1928, to Green regarding the negative of a picture of his mother at the Old Dartmouth Historical Society, in which she said:

"I also have a negative of the Edward Mott Robinson house on 2d St. South of the Custom House. It, as of course you know, became eventually The Germania House and then was *naturalized* and was the 'American House.' This sign is on the door in my picture. The whole front of the house is now cut off by buildings added to it. Would you care for this? If it would accommodate you, I am always so happy when I can help any one who is interested in Old New Bedford and its people. I was glad that I had the negative of The Gideon Howland house which Mr. Emery had printed for you. Please let me know if you care to use my negative" (6109-10).

and No. 247, Green's reply of September 6, 1928, reading:

"Please accept my sincere thanks for your letter of August 28th. I am very much interested in any negative you may have of my mother or any house in which she or her father, Edward Mott Robinson, lived. If you will be so good as to loan such negatives as you may have to me, I will send them to New York and have an expert make copies, returning to you immediately the negatives with copies for yourself" (6110).

No. 248, letters from Miss Watson to Green relating to same subject (6111).

No. 249 inscription on picture of house of Isaac Howland, Sr. belonging to Miss Watson:

"The house originally faced Union Street where the entrance was. The rear part and flight of steps were added when the house was changed. Also the east addition. A pre-revolutionary house.

This picture was loaned to me to copy by the Ashmead Bartlett Family in Brooklyn, with your mother's permission. Mr. Geo. F. Bartlett asked them for it for me.

* * * * * * *

I have understood from people of your mother's age that this house was the scene of many delightful social functions which they attended.

The house stands next south of the Custom House.

* * * * * * *

Mr. Geo. F. Bartlett and Mr. F. H. Hooper both told me that your mother said to them once, as they were talking together, 'People think I was born in the stone house on Pleasant Street, but I was born in the Capt. Merrill house'. A friend of mine now living said that when Capt. Merrill bought the house he told his wife, 'This is the house Hetty Robinson was born in'. My friend heard this as a girl" (6112-13).

No. 250, Green's letter of acknowledgment to Miss Watson, September 15, 1928, reading:

"It was very good of you to send me the negatives and I am sending them on to New York to have reproductions made. It will give me a great deal of pleasure to see that you have a complete set of pictures for yourself, and you may be assured I shall return the negatives to you in good condition after the pictures have been made" (6113).

No. 251, telegram from Green, September 17, 1928, to President of Wellesley College regarding the education of Miss Eugenia Corley, in which he says, "I don't want her to go to a Southern college" (6114).

No. 252, letter from Green, September 17, 1928, to Herbert & Huesgen Co., New York City, asking them to make the best enlargement they can of old negatives, including one of his mother (6115).

Nos. 253, 254, 255 and 256, paid bills McNally Transfer Company, Inc., New York City, November, 1928, for packing articles shipped to Round Hills, South Dartmouth (6115-17).

No. 259, agreement between Green, of Terrell, Texas, and Charles M. Carroll, of New Bedford, December 13, 1928,

to secure advancements made by Green for taxes and development of Barnard Estate of 160 acres at Mattapoisett, Massachusetts (6117-20).

No. 260, letter to Mrs. Helen B. Prescott, New Bedford, enclosing check for $1,000 and stating, "My favorite charity is the hospital" (6121).

No. 263, letter from Harry Neyland, New Bedford, to Green, April 7, 1929, in which he says:

"We have cornered the market on fog. In fact we have the worlds supply and none can be purchased elsewhere. If you need any in order to continue your experiments while in the sunny South your orders will receive our prompt attention.

• • • • • • •

Many men and teams are busy working on your airport. Your Captain and your crew are busy fitting out your ship and your many friends are eagerly awaiting your return" (6121-2).

No. 266, agreement between The Miami Aircraft Corporation, of Miami, Florida, and Green, "of Round Hill, South Dartmouth, Mass.," August 14, 1929, for seaplane (6123-4).

No. 267, agreement, September 5, 1929, between the Standard Oil Company of New York and Green, "of Round Hills, South Dartmouth, Mass.," for purchase of oil, installation of storage facilities at South Dartmouth, etc. (6124).

No. 268, letter to Green, September 12, 1929, from C. F. Chapman, Editor of "Motor Boating," regarding making a new trophy, to be known as the Round Hills Trophy, to be a replica of the Star Island Trophy made by Caldwell and Company, Philadelphia (6130-1).

No. 271, agreement with Green, "of Dartmouth in the County of Bristol and Commonwealth of Massachusetts," October 26, 1929, for the construction of a diner to be located at Round Hills for the employees of the airport (6131-3).

No. 272, letter from the War Department, W. J. Barden, Colonel, Corps of Engineers, Division Engineer, to Green, South Dartmouth, Mass., November 2, 1929, regarding the construction of a launchway in Buzzards Bay near Round Hills (6134).

Nos. 273 and 274, copies of telegrams between Green and T. E. Corley, Dallas, Texas, relating to the sale of the Terrell Company, November 12, 1929 (6138).

No. 276, agreement, November 20, 1929, between Green, of Round Hill, South Dartmouth, Massachusetts, and Standard Oil Company of New York for the storage and handling of petroleum products at South Dartmouth (6139-44).

No. 280, letter from Green, March 6, 1930, to James K. Donaghy, New Bedford, regarding "restaurant concession at Round Hill" (see Ex. No. 271) (6145).

No. 289, letter from Green, Sherry-Netherland Hotel, New York City, June 19, 1930, to W. P. Allen, Terrell, Texas, in which he says:

"I don't believe I have experienced such hot weather as we are having in New York now in many years and we are getting ready to go up to Round Hill, where I hope it will be more pleasant" (6145-6).

No. 292, contract, July 22, 1930, between Tarello Tile Company, New Bedford, and Green, of Round Hills, Massachusetts, for removal of floor and installation of new tile floor in open terrace at the residence of E. H. R. Green, Round Hills, Massachusetts, contract price $13,819 (6147-50).

No. 293, contract, July 23, 1930, between Artesian Well and Supply Company, Providence, Rhode Island, and Green, South Dartmouth, Massachusetts, for a drill well on the premises of the owner at South Dartmouth (6150-3).

No. 294, August 25, 1930, and No. 295, September 19, 1930, contracts between same parties for drill well on same premises (6153-6).

Nos. 296 and 297, correspondence, September 25-27, 1930, between New Bedford Times and Green for the loan of three amplifiers for the broadcast of the World Series Baseball Games from October 1st to 8th (6159).

No. 298, letter from Green, October 20, 1930, to D. C. Wismer, Hatfield, Pa., enclosing check for National Bank Notes purchased in which he says:

"The doctor has ordered me out of this climate immediately, so as soon as arrangements can be concluded it is my intention to go to Lake Placid, N. Y. for awhile;

therefore, please do not send anything more to me here" (6160).

No. 299, letter from Green, October 20, 1930, to George H. Blake, Jersey City, New Jersey, enclosing check for National Bank Notes purchased and containing the same statement as in No. 298 regarding his departure (6161).

No. 300, letter from Green, Grove Park Inn, Asheville, N. C., November 7, 1930, to Chief of the Airport Section, Aeronautics Branch, Department of Commerce, Washington, in which he says:

"I beg to say that Round Hill Airport occupies about 79 acres of my private estate in South Dartmouth, Mass. Before the airport was built this entire acreage was a marsh, and a fair valuation at that time would have been $1,000 per acre. However, in order to secure the results I sought, it was necessary to fill it all in with sand pumped from Buzzard's Bay and then top with soil hauled by trucks from the surrounding country, in order to provide a sodded airport, which it now is. This was a very expensive job and today a conservative estimate of the value of this 79 acres would be $5,000 per acre, or $395,000.00" (6161-2).

No. 301, contract, November 17, 1930, between Artesian Well and Supply Company, of Providence, R. I., and Green, "of South Dartmouth, Mass.," for drilling a well on his property at Round Hills, and No. 302, letter from said contractor, and No. 303, letter of Green's secretary from Asheville, North Carolina, November 19, 1930, enclosing his check to said Company for $4,900 (6162-5-6).

No. 305, letter from W. P. Allen, Terrell, Texas, March 1, 1931, to Green, reading:

"It has been some time since I have had a letter from you, but I had one a few days ago from Dr. Buie, and was glad indeed to hear from you through him.

From what he wrote me I infer that you had not at that time definitely made up your mind as to whether you were going to come to Marlin this spring" (6166-7).

No. 306, letter from W. P. Allen, Terrell, Texas, April 9, 1931, to Green (describing East Texas oil field):

"When I received your last letter, I had my grip about ready to pack, and come down there, but upon receipt of

same I came to the conclusion that you were going to be in Marlin about May 1st, although you did not say so.

So Dr. Buie and I are expecting you about that time, and hope our guess is not wrong" (6167-8).

No. 307, letter from Green, April 13, 1931, to said Allen, reading:

"I was glad to receive your letter of April 9th. I note what you say about my going to Marlin, but can only say that I do not know even yet where we are going. Of course, if Marlin is finally decided upon I shall be glad to see you there and allow you to get off of your mind what seems to be troubling it. I can very well imagine that you have simply been itching to get down there in that new oil field, and you are to be congratulated that you have not permitted yourself to be swept off your feet" (6169-70).

No. 309, letter July 7, 1931, to Green from State Reclamation Board of Massachusetts regarding the elimination of mosquitoes in the vicinity of Round Hills and asking a contribution (6170-2).

No. 310, letter of Green, July 8, 1931, in reply enclosing his check for $500 as a donation towards the work (6173).

No. 311, letter of Green, July 29, 1931, to The American Numismatic Association, Chicago, Illinois, enclosing check for dues and subscription to The Numismatist, to be sent to him at Round Hill House, South Dartmouth, Mass. and 46 Star Island, Miami Beach, Fla. (6173-4).

No. 314, letter from Green, August 24, 1931, to W. P. Allen, Trustee, Terrell Trust, asking that checks be issued for $1200 each for Mary Frances Cammack, Margaret McElroy and Eileen Stephenson (6174), and No. 315, Allen's reply transmitting checks, August 28, 1931 (6175).

No. 316, letter from Green to Lorne K. Smith, Toronto, Canada, September 4, 1931, transmitting medallion commemorative of his visit to the "Charles W. Morgan," in which he said:

"It is a source of considerable gratification to me to know that my efforts to preserve for posterity evidences of some of the things which have helped to make our country the greatest on earth have not been in vain" (6176).

No. 318, letter from Norman Seaver Swan, New York City, to Green, March 1, 1932, requesting an interview re-

garding commercial aviation, and No. 319, Green's reply, March 4, 1932, in which he says:

"I shall be glad to see and have a chat with you when I return to New York, which will probably be in the early part of June, and renew the friendship which existed between our families. While in New York we live at the Sherry-Netherland and you might call up there sometime in June and make an appointment" (6177-8).

No. 320, letter May 16, 1932, from Green, Miami, Florida, to Captain Albert L. Edson, East Boston Airport, expressing regret at the death of Lt. Robert L. O'Brien and enclosing check for $500 for the fund being raised for the education of young "Bobbie" (6178-9).

No. 321, letter June 3, 1932, from the National Cyclopedia of American Biography to Green relating to publishing a biography of his grandfather, Edward Mott Robinson, and No. 322, Green's reply referring them for information to "The Howland Heirs" prepared by direction of the Court by Emery, genealogist, for the Sylvia Ann Howland Trustees in order to ascertain the legal heirs of Sylvia Ann Howland and enclosing an extract from the book, Ex. No. 322-A (6180-88).

No. 323, letter from the President of the Texas and New Orleans Railroad Company, July 16, 1932, suggesting his resignation as a Director, and No. 324, Green's reply submitting his resignation (6188-90).

No. 325, letter from the President of the Railroad Company thanking him for the resignation (6191).

No. 326, letter to Green, July 23, 1932, from Island Airways, Inc., thanking him for the use of the splendid airport and seaplane facilities at Round Hills (6192).

No. 333, letter from Green, Lake Placid Club, to W. P. Allen, Terrell, Texas, December 12, 1932, in which he says:

"Upon instructions of my doctor I have been up here at Lake Placid for the past seven weeks and I think the invigorating climate has benefitted me considerably. It has been snowing steadily for two days and everything around here looks beautiful.

We are leaving for New York in a few days, where I shall be at the Sherry-Netherland, 5th Avenue and 59th Street, until after the first of the year, and then on to Miami Beach for a few months" (6194).

No. 338, letter from Green, Star Island, Florida, February 17, 1933, to Harry Neyland, New Bedford, authorizing the purchase of new sails for the "Morgan" and of a whale's jaw, in which he says, "The weather here is as near perfect as one could expect to find and my general condition seems to be improving with the change" (6195).

No. 343, letter from the Corresponding Secretary of The Society For The Preservation of New England Antiquities, Inc., Boston, March 15, 1934, to Green, Star Island, Florida, thanking him for the pamphlets on Round Hill Mill by Emery (6196).

No. 345, letter of Green's secretary to Neyland, October 11, 1934, asking for a list of "all the boys who are coming, in order medals may be ready to hand to them while they are aboard the ship" (6196-7).

No. 346, letter to Green, New York City, January 29, 1935, from the Secretary of the Southern Pacific Company asking return of the passes issued to Colonel and Mrs. Green on account of the Texas Midland Railroad, dissolved (6197-8), and No. 347, Green's reply, February 2, 1935, complying with his request (6198).

No. 348, letter from Dr. Buie to W. P. Allen, April 13, 1935, asking him to get Green to come back to Marlin, Texas, on his way from Miami Beach (6199), and letter from Allen to Green, Star Island, April 29, 1935, enclosing Dr. Buie's letter, stating they would be delighted to have him come to Marlin "and spend a month on your way home" Ex. No. 349 (6200).

No. 350, telegram from Green, Miami Beach, May 7, 1935, to Henry Chapman, Philadelphia, Pa., reading:

"Effective at once and until further advice my address will be Falls Hotel, Marlin, Texas. Do not send any coins there, as am not taking collection. Only low numbered National Bank bills interest me while there" (6201).

No. 351, letter from Green, July 12, 1935, to The Lantern League of the Old North Church, Boston, accepting invitation to become a Lantern Bearer and enclosing $250 donation (6201).

No. 352, letter from W. P. Allen, Terrell, Texas, July 24, 1935, to Green, South Dartmouth, enclosing check as requested on Terrell Trust for $1,000 for Eileen Stephenson, in which he says:

"I enjoyed my short visit with you on the train from Terrell to Marshall and to be perfectly frank with you, you looked a whole lot better than I expected to see you. To be perfectly frank with you, Dr. Buie and I had a lot of correspondence before you came here and I wrote him, as I wrote you, that the only way he could ever get you up here was to promise you that you would not be warted by anybody in Texas, especially me, and I am glad that he carried out these instructions. I had a letter from him a few days ago in which he told me that you had been going to town since you got back to Round Hills and he told me that you had made a marked improvement since he was there and I would not be surprised if you do not outlive all of us" (6202).

No. 355, invitation from The Massachusetts Institute of Technology to Colonel E. H. R. Green to visit the Research Laboratories at Round Hills, South Dartmouth, Saturday, November 23, 1935—Program of Research on Fog Including the Problem of Its Dissipation (6203-6).

No. 357, certificate of George H. Sheppard, Comptroller of Public Accounts, State of Texas, regarding examination of the Tax Rolls of Dallas County, Texas, with reference to poll tax assessment of Green in said County from 1893 to 1907, inclusive, showing no poll tax assessment on regular roll in these years (6206-8).

No. 358, certificate of same official showing poll tax collected from Green for the years 1907, 1908 and 1909 in Kaufman County, Texas (6208-9).

No. 359, certificate of same official showing poll tax assessment against Green, Kaufman County, Texas, for the years 1893 to 1907, inclusive, showing no poll tax assessed on regular assessment rolls in those years, in 1908 an assessment of $1.75 and in 1909, $1.75 (6209-10).

No. 360, certificate of same official that an examination of the monthly reports filed by the Tax Collectors of Dallas County in the years 1893 to 1907, inclusive, did not show any poll tax payments in the name of Green (6210).

No. 361, certificate of same official that an examination of the monthly reports of the Tax Collectors, Kaufman County, Texas, showed payment of poll taxes by Green for the year 1907 (6211).

No. 362, certificate of Mrs. Walter Beard, Assessor and Collector of Texas, Kaufman County, Texas, in custody

of the records of the assessment of real and personal property in said County for the years 1910 to 1936, both inclusive, stating that the schedule attached shows in full the assessment made against the property of E. H. R. Green for the respective years therein set forth (6212-15).

(The attached schedule shows the assessment of 50 Bank shares from 1910 to 1914, inclusive, and 100 Bank shares from 1915 to 1936, inclusive.)

No. 363, certificate amending by-laws of Whaling Enshrined, Incorporated, and fixing July 21st of each year, the date on which the "Charles W. Morgan" was launched in 1841, for the annual meeting (6215).

No. 364, certified copy of extract from first meeting of the Incorporators of Whaling Enshrined, Incorporated, held August 6, 1935, designating, among other life members, E. H. R. Green (6216).

No. 365, statement of account of Green with The American National Bank, Terrell, Texas, from December 31, 1910 to November 20, 1914 (6219-22), showing that his average balances gradually declined to nothing.

No. 366, inscription on memorial:

"Dedicated To The Memory Of Hetty Howland Robinson Green. November 21, 1834—July 3, 1916. By Her Son Edward Howland Robinson Green, 1920" (6222).

No. 367, application for life membership in the Massachusetts Society of the Sons of the American Revolution by Edward Howland Robinson Green, "descendant of Colonel David Mosley, who was born in Westfield, Mass. on the — day of —— 1735" (6223-6), giving Green's family history and his residence, South Dartmouth, Massachusetts (6224).

No. 368, certificate of Green's membership in the Massachusetts Society of the Sons of the American Revolution, dated November 14, 1924 (6229).

No. 369, Green's application for membership in the Society of Colonial Wars by right of descent from William Robinson, Deputy Governor of Rhode Island, giving the address, Round Hills House, South Dartmouth, Mass., and supporting affidavit on the family history (6229-35).

No. 370, certificate of life membership in the Massachusetts Horticultural Society (6236).

No. 371, certificate of active membership in the American Numismatic Association, giving the address, Round Hill House, South Dartmouth, Mass., and No. 372, membership card (6236-7).

No. 374, plats of Round Hills Airport and Round Hills Research Division of the Massachusetts Institute of Technology (6237).

No. 375, photograph of the Howland Coat of Arms, No. 377, photograph of the Captains of the Stone Fleet and No. 378, photograph of private signals of whaling vessels (6238).

No. 379, statement of Massachusetts Institute of Technology of facilities, funds, operating expense and allocation of staff for the Round Hills work, 1932-33 (6239); facilities furnished by Colonel Green (6240) and funds supplied by him, aggregating $45,572.75 (6241-2).

No. 380, copy of "Old South Leaflets, No. 120"—Gosnold's Settlement at Cuttyhunk (6252-73).

No. 381, license September 16, 1919, Commission on Waterways and Public Lands to Green to build and maintain a marine railway in the Town of Dartmouth (6274).

No. 382, license dated August 17, 1921, from Department of Public Works to Green to build a platform and wharf at Round Hills in Buzzards Bay, Dartmouth (6276).

No. 383, license dated October 28, 1921, from the Department of Public Works to Green to build a pile wharf and drive piles in Buzzards Bay, Dartmouth (6279).

No. 384, license dated November 20, 1924, from the Department of Public Works to Green to build bulkhead, fill and dredge in Buzzards Bay, Dartmouth (6282).

No. 385, license November 12, 1925, from the Department of Public Works to Green to build sea wall and fill in Buzzards Bay, Dartmouth (6285).

No. 386, license December 9, 1926, from Department of Public Works to Green to build a pile pier and riprap in Buzzards Bay, Dartmouth (6287).

No. 387, license August 24, 1927, from Department of Public Works to Green to dredge and to fill in certain tidal tributaries in Dartmouth (6290).

No. 388, license September 20, 1927, Department of Public Works to Green to build timber culvert, etc., Buzzards Bay, Dartmouth (6293).

No. 389, license December 27, 1927, Department of Public Works to Green to construct and maintain two dolphins and to remove rocks in Buzzards Bay, Dartmouth (6295).

No. 390, license September 17, 1929, Department of Public Works to Green to build and maintain launchway for seaplanes in Buzzards Bay, Dartmouth (6297).

All of the aforesaid licenses recited that the applicant, E. H. R. Green, was "of Terrell, State of Texas."

No. 391, certificate of incorporation of Whaling Enshrined, August 26, 1925 (6300).

No. 392, certificate of incorporation of Round Hills Radio Corporation, June 28, 1922 (6302).

EILEEN STEPHENSON, of New York City, testified that she occupied a secretarial position with a firm of New York attorneys and was born in New Bedford in 1915; had known Colonel Green since she was fourteen years old, having met him outside of Kelleher's Drug Store in New Bedford while on her way to school (6305-7); he saw her playing and wanted to know how old she was, where she was going to school and what she wanted to do when she grew up; she would talk with him every day she saw him and he bought her costume jewelry and asked Mrs. Green to have her down to Round Hills for a week end; in both 1929 and 1930 made occasional visits to Round Hills (6308); Green had her sent to the "House in the Pines," a private boarding school at Newton, Massachusetts, to prepare young girls for college; she entered there September, 1930, and graduated in 1934 (6309); from 1931 on, she would often go down to Round Hills in June and spend the rest of the Summer, until two weeks prior to returning to school in October; during the first three years of her acquaintance with Green and visits to Round Hills, he was happy and jolly and always joking (6310); when she was first there, he would come down to breakfast and sometimes Mary Frances Cammack and Margaret McElroy were there—other protegees of his; after that he would go to New Bedford and come back for lunch with them and afterwards the witness would go up to town with him in the car; before she got her car, she went with him frequently in the afternoon; his first stop was Kelleher's Drug Store, where he bought bromo-seltzer and then purchased supplies for his stamp and coin collections, etc. (6311); when the cellophane plates came out he would buy them and tell her in the evening how to work them; on his way home he took a road that passed a place where they

had goats and he used to stay in the car and let Stella, the dog, chase the goats, then park on the ramp for awhile in his place and then go to his room; on Sunday afternoon, he would take witness down and sit on the ramp all afternoon; the people would crowd around and talk; this was in 1931, 1932 and 1933; in the evening they would have dinner, which was quite an affair, and Mrs. Green, "Uncle Ned," the other girls and witness would be at the table. Occasionally Mr. and Mrs. Bartlett, of New Bedford, or Mrs. Nicholson and Dorothy Nicholson, a neighbor, would be there (6312-14); after dinner they would go to the library and talk and there was a slot machine in the library and Green would give them nickels and they would play an hour or so, after which he would go upstairs and witness would follow and work with him on his stamps, sometimes on coins; in 1930 and 1931, her recollection is that he was working on coins (6315); the latter part of the time she was there he took up stamps; he would start about eight o'clock at his desk and sit there until ten, when the man would bring up a luncheon of crackers and milk, or something of that sort; after that he would listen to the news on the radio and sometimes to a program and then go back to his stamps until 12:30 or one o'clock; Mrs. Green would come in often and ask if she could help him (6317); after 1933, there was a change in his condition, he didn't seem to have much ambition, never laughed as much as he used to do; his only interest then seemed to be his stamp collection and it seemed as if he wanted to get that completed (6318); he continued to go to town unless he was very sick; in the later years, witness had her own car and did not go with him; shortly after she was sixteen and qualified to drive, he gave her a Ford Roadster (6318); also made her other gifts—diamond ring, diamond bracelet, a string of pearls, etc., two shares of Chase National Bank stock and money, besides paying for her education; when she graduated from the "House in the Pines," she went to the Boston University in September, 1934, where he paid her expenses, and was a student there at the time of his death; he was very kind to her up to the very end (6319-20). On cross-examination by counsel for Texas, witness testified that Virginia Dare, Margaret McElroy and Mary Cammack, who were visitors at Round Hills, were all from Texas and witness was known as the only Massachusetts ward of the Colonel (6322-3); she often heard the Colonel say that he was by

birth an Englishman, by education a Catholic, in business a Jew and by residence a Texan (6323); during all the time she knew Green he was not able to walk much and the other members of the family were concerned about his health and opposed to him taking bromo-seltzer; that witness promised not to tell Mrs. Green he was taking it (6323-4). On cross-examination by counsel for Florida, she testified that from 1931, as his interest in things on the outside seemed to wane, he gave more attention to his stamps and things on the inside (6325).

On cross-examination by counsel for New York, witness testified that Green did not indicate any preference for the selection of a school in Massachusetts until she got to college, and left it to her (6327); she left the Boston University because she could not afford to attend (6329).

On redirect examination by counsel for Massachusetts, the witness testified that Green wanted her to attend the Remington-Rand School in Boston, a secretarial school, and afterwards decided it was all right for her to go to the Boston University (6329-30).

Wilbur K. Potter, recalled, identified Green's signature to Mass. Ex. No. 356, Massachusetts vehicle registrations for various cars, which was given in evidence (6333).

At the hearing at New Bedford, Massachusetts, February 1, 1938, counsel for Massachusetts gave evidence by the following witnesses tending to prove:

Raymond McLeod, of New Bedford, testified that he was an attorney at law and title examiner with the firm of Crapo, Clifford, Prescott and Bullard; that he had made a search of the titles to the Round Hills property to determine the lines of descent and the history of the additional lands acquired by Green in his lifetime and prepared a chart "Round Hills Farm," Mass. Ex. No. 413 (6343); that the original deed was in 1652 from the Indians to William Bradford and his colleagues and took in the entire property; the part indicated in yellow on the chart was set apart to Howland in 1712 and the portion indicated in green on the chart has been in the Howland family during this en-

tire period and with the exception of fifteen years from 1826 to 1841, it was in the direct ancestors of Colonel Green and since then has been in a direct line of descent; at the death of Mrs. Hetty Green in 1916, it went to Colonel Green and his sister in undivided halves by device under her Will; the acreage they obtained was about 75 acres (6341-7); that was the acreage upon which the Round Hills mansion rests (6348); that Mass. Ex. No. 66 is a description from a deed by the Trustees under the Will of Sylvia Ann Howland to Hetty Green, dated January 3, 1882, and recorded May 8, 1886 (6348).

Witness identified Mass. Ex. No. 414 as a copy of a deed to Green, of Terrell, Texas, from Gideon K. and Joseph Howland, of Dartmouth, Massachusetts, dated March 20, 1918, of a tract of 75 acres known as the Stephen Howland Farm (6350-4); that the tract thereby conveyed is indicated on the chart, Ex. No. 413, in red and takes in the tracts in lavender and also two interior parcels marked in pencil (6354); that Mass. Ex. No. 415 is a deed from Edward Howland to Green, of Terrell, Texas, July 26, 1919, of a parcel of land in Dartmouth east of the Smith's Neck Road, containing about fifteen acres (6356-9) and is designated on the chart, Ex. No. 413, in pencil west of the Stephen Howland Farm and referred to as the John Howland Farm (6359); that Mass. Ex. No. 416 is a deed from Charles W. Howland and William B. Collins, of Dartmouth, dated July 10, 1925, to Green, of Terrell, Texas, containing over four acres, designated on the chart, Ex. No. 413, in white, marked "Charles W. Howland and Collins," bordering on the creek between the Stephen Howland Farm and the Round Hills Farm (6360-2); that Mass. Ex. No. 417 is a deed from Otis S. Cook, of New Bedford, to Green, of Terrell, Texas, August 15, 1927, of a tract of about four acres, designated on the chart "Robert W. Swift," who sold to Cook (6363-5).

Witness further testified that apart from the grant of a building for Whaling Enshrined, there were no grants out of Colonel Green of the land conveyed to him (6368).

On cross-examination by counsel for New York, the witness testified that the title to the original Howland Farm is now in Mrs. Wilks; the Will has not been probated in Massachusetts; in the record it would be one-half in the Colonel and one-half in Mrs. Wilks, as far as Massachusetts is concerned (6370); they received undivided halves at the time of the death of Mrs. Hetty Green (6371).

In response to questions by counsel for Massachusetts, witness further testified that the acreage of the entire tract inherited plus that acquired about 150 (6371); subsequently witness corrected this to 270 acres—130 for Round Hills and 140 purchased (6561).

SAMUEL S. PECKHAM, of New Bedford, testified that he was born in 1873 on the Green Farm, South Dartmouth, and lived in the old original house, over 200 years old at that time; his father and mother sometimes took boarders and Mrs. Hetty Green and her two children boarded with them in 1882 or 1883; her husband was there for a short time the two Summers they boarded with them; they stayed there from six to eight weeks each Summer; the children's names were Ned and Sylvia; Ned played with witness around the farm most of the time (6372-4).

On cross-examination by counsel for Texas, he testified that he can not say whether they returned because he moved away and did not see anything of Green in manhood (6375-6), and in response to further questions by counsel for Massachusetts, testified that the original Howland house is the one now preserved as a relic (6378).

WILLIAM M. EMERY, of New Bedford, testified that he was a writer on genealogical, biographical and historical research and had been associated with the New Bedford and Fall River Papers and Boston Transcript for many years; that he was the author of the book called "The Howland Heirs", a story of the family, fortune and inheritance of a trust established for Mrs. Hetty Green, and had been employed as a genealogist by the Trustees of the Sylvia Ann Howland Trust (6380); that Colonel Green was the ninth in descent from Henry Howland, who was the first pioneer of that line to come to America (6382); that Green was not a descendant of any of the passengers on the Mayflower, so far as he could ascertain; Henry Howland did not come in the "Mayflower" but in the "Ann" or "Fortune" in 1621 or 1623 (6382-83); that witness first personal contact with Green was in 1921 at Round Hills (6383-5); that Green talked with him about his interest in the history of the Round Hills Farm and his ancestors and said he contemplated making

a historical or ancestral spot and wished witness to be the historian and write him a series of articles in connection with the various phases of the Round Hills Farm and the occupants (6384); witness did this and turned the matter over to Green; the first was a story of the visit of Bartholomew Gosnold, an explorer who came from the Island of Cuttyhunk and visited there in 1602 (6384); that Green frequently talked of this and at one time had the intention of erecting a tablet to the memory of Bartholomew Gosnold's visit, the next monograph was a general history of the Round Hills Farm and its occupants, and subsequently the story of the old windmill which stands on the ground; in 1924, Green had purchased it from the descendants of a Rhode Island family and set it up at Round Hills; Green paid witness for all of this work and discussed with him the preparation of other treatises which he never completed pertaining to the history of Round Hills and the whaling industry (6385-6); Green expressed the deepest interest in the whaling industry in which his ancestors had engaged and wished to acquire all kinds of objects relating to it and early in their acquaintance spoke of acquiring a library pertaining to that industry, history and genealogy; he showed the deepest interest in this matter and asked witness' advice about getting certain books over a period of years; that witness examined the Green library and prepared a list of the books relating to whaling and local matters, which was given in evidence as Mass. No. 418 (6388); that some of these books were source books and great authorities on the subject; he found no books relating to Texas or Florida history in the collection, but there was an ancient book relating to the Province of New York (6394); that witness prepared the data for Green submitted with his application for membership in the Massachusetts Society of the Sons of the American Revolution, Mass. Ex. No. 367; at the conclusion of the statement, his residence is given as South Dartmouth, Massachusetts; that witness obtained this information as to his residence from Colonel Green (6398); that some of the information was supplied by Green and some of it the witness obtained from records and genealogical sources (6399); that the affidavit to the application was signed by Green October 27, 1924, before a Notary Public (6401).

Witness also prepared the statement for his application for membership in the Society of Colonial Wars, which is

signed and sworn to by Green and the address given Round Hills House, South Dartmouth, Massachusetts; th information concerning residence was given to the witne by Green—Mass. Ex. No. 369 (6402-4).

Witness also identified Mass. Ex. No. 368 as a photograp of the certificate of Green's membership in the Massachu setts Society of the Sons of the American Revolution, whic hangs in the Round Hills House (6405).

Witness further testified that there was also a photo graph-picture of St. Joseph's Convent at Pleasant Street New Bedford, hanging in the Round Hills House, whic Green told him on one occasion, before he ever came t live there, he and his mother were visiting New Bedford drove up Pleasant Street, passed this house and she pointed to a window in one of the upper stories and said, "Ned, that window is in the room where your mother was born;" it was a large stone mansion built about 1830 and is still standing (6406); Green told him he intended to establish a whaling museum and was going to have a collection of rare coins there and this would be the final resting place of his historical and genealogical library; there was a cellar dug for the museum near the "Morgan" which remained open for some time and was afterwards filled up and Green said he had plans prepared by a New Bedford architect for a building; witness is familiar with the old blacksmith shop and old candle works that Green bought and had re-constructed to show the history of the whaling industry; the foundation for the museum was not very far away (6408-9); Green said he was very much pleased to have the public use his grounds and he regarded the money left him by his mother as a sort of informal trust and she would be very glad to have him spend it as he pleased and glad to know that he spent it for the benefit of the public, and he felt he would like to spend it for the benefit of the public on his estate and welcome the public there; that on one Sunday afternoon witness recalls a man in the crowd addressed Green and thanked him for all he had done for the public; Green told witness he got a great kick out of that sort of thing and felt very much pleased that any one acknowledged their indebtedness to him for what he had done to please the public and seemed enthusiastic about the attitude of the public towards his place (6409-10).

Witness identified Mass. Ex. No. 243, letter from Green to him relating to a photograph of the old Gideon Howland

house in New Bedford, the home of Hetty Green's grandfather, where she spent much of her girlhood, and he set great store by it due to the family associations (6413); that Mass. Ex. No. 284, a letter from Green, April 24, 1930, to witness related to a book by Boyd and Sparks, about Green's mother, which witness had reviewed and criticized for the Boston Transcript, receiving some letters of commendation from people for his attitude who did not approve of the book, he sent them to the Colonel and this was his response (6414); that Mass. Ex. No. 343, a letter dated March 15, 1934, from William S. Appleton, Corresponding Secretary of the Society for the Preservation of New England Antiquities, has reference to his pamphlet on the windmill (6414); that Mass. Ex. No. 366 is a photograph of the tablet in the rooms of the New England Historical and Genealogical Society in Boston to the memory of Hetty Howland Robinson Green by her son (6415).

Witness further testified that Green never gave him any indication of his intention to give up or move away from Round Hills (6416). On cross-examination by counsel for Texas, he testified that in his book "The Howland Heirs" Colonel Edward H. R. Green was given as one of the Trustees, with address, 111 Broadway, New York City; that was prior to the erection of the Round Hills mansion (6417); that the article on Green in this book was prepared from newspaper articles about him and not from Green, with whom he was not personally acquainted at that time; the facts all came from the newspapers (6418-19, 6422).

On cross-examination by counsel for Florida, witness testified his first interview with Green was in 1921 and most of his interviews were devoted to discussing work that Green had assigned or the witness had suggested, for which Green fixed the compensation (6432-3); that the windmill was brought from Rhode Island, because he could not find one in Dartmouth, to show what they had in his ancestors' day and create this atmosphere of antiquity at Round Hills, upon which the place is built; that about 90% of the pictures there relate to whaling activities and in front of the house are masts from old ships; that the whaling ship is in front of the house and there are hundreds of feet of great chains around the grounds (6434-6).

On cross-examination by counsel for New York, he testified that in the Fall of 1925, he had a talk with Green in which he informed him that the next Summer he expected to be

very busy with his sister and lawyers in New York in
settlement of his mother's trust which was for ten ye
and was expiring the Summer of 1926; and he stated t
he and his sister would have to agree on the disposition
the mansion which, he informed me, being on land ow
by them jointly and undivided gave her the title to half
the house, and he said at the time that he would like
have it for some sort of an orphanage and his sister wo
like to have it for a home for aged couples, and he said th
had to now get together and see what would be the dispo
tion of it after he was gone (6441).

The witness further testified that Green said he wo
not let anybody go in the old Howland house because
floors might give way and some one be injured and he k
it locked for that reason; that membership in the Massach
setts Society of the Sons of the American Revolution is
limited to Massachusetts residents—any one with any M
sachusetts ancestors is eligible for membership (6444-5).

On cross-examination by counsel for Mrs. Wilks, witne
testified that the information he put in the applicatio
Mass. Exs. Nos. 367 and 369, as to the residence of Colo
Green he obtained from the Colonel himself in 1924 (6448-9
that Green said he planned to come to Round Hills abo
the 1st of July because he wished to avoid the payme
of income taxes to Massachusetts (6449).

Charles Sumner Ashley, of New Bedford, testified th
he had been Mayor of New Bedford for 32 years and kne
Green and his mother (6455); that Mrs. Hetty Green brough
her son to the witness' office in 1890 to 1892; after he can
to Round Hills he saw him very often; he identified h
signature on Mass. Exs. Nos. 100 and 227, certificates
ownership in the West Shore Trust, dated 1920 and 192
covering property located at Padanaram purchased by Co
onel Green (6456-8); the meetings of the Trustees of thi
Trust were attended by Green; the first meeting was hel
on the Round Hills Estate (6459); that was the first an
only time witness was in the house but was frequentl
around the grounds; Green said he was getting his money'
worth watching the people enjoy the grounds (6460); h
received many Christmas presents from Green for ten o
twelve years preceding his death; had a Mayors' outing a

Round Hills September 3, 1921, Green presented them all with little medals of the "Morgan" and they displayed much interest in the whaling ship (6461-3); Green said no matter what happened to him Whaling Enshrined would go on just the same (6464); witness was the owner of the boat when it became enshrined and afterwards was Treasurer and Green President of the Corporation (6465); in the Spring of 1929, he visited Green at Miami Beach and went sailing with him (6466).

On cross-examination by counsel for Texas, he testified that so far as he knows Green made no provision for continuing Whaling Enshrined (6467); that Green's physical condition went from bad to worse in the last six years; he lost a lot of flesh but his brain seemed to be as clear at the last as it was at first (6469). Witness identified Tex. Ex. No. 333, application for incorporation of Whaling Enshrined, September 28, 1936, and the same was given in evidence (6470); among other signatures was "Edward H. R. Green," residence, "Terrell, Texas" (6474) and the names of the officers were President Edward H. R. Green, residence "Terrell, Texas," Post Office address, "Round Hills, So. Dartmouth, Mass."; it was acknowledged before a Notary August 7, 1925 (6477-8).

On cross-examination by counsel for Florida, witness identified Fla. Ex. No. 26, a photograph of Green's house at Miami Beach, Florida, in the shape of a Christmas card which he received from Green (6485); that this was a distinctly private residence so far as he knew and there was no suggestion of any museum down there (6489); witness believes he built Round Hills for a home; Green was not registered as a voter there (6489-90).

On cross-examination by counsel for New York, he testified that Green never attended social functions; he was invited to everything and witness gave him a public letter requesting all officials in the service of the City to promote his convenience and interests to the fullest extent because of his generous hospitality to the people; he spent lots of money and gave work to a lot of people (6492-3).

Howard E. Odiorne, of Fairhaven, Massachusetts, testified he was a photographer and met Green in 1924; he stopped at his store almost every day for months; he was

building a photographic studio and wanted him to go down and assemble the equipment (6496); witness started there about October 6, 1924, and stayed until December 20th, a few days before Green went to New York; was there the next Summer from shortly after the 1st of July until about December 20, 1925, and during the season of 1926, but was too busy to go there in 1927 but spent every Wednesday afternoon and nearly every Sunday at Round Hills until September or October; in 1928, he was there off and on; Green had a well equipped studio, the best equipment he could get, a very good equipment for artificial lighting of portraits, etc., a system of tanks where he could develop roll film and all the other types of film that were used, a grand layout of cameras and lenses and witness thoroughly enjoyed working with the equipment because he could not afford it himself (6498-9); Green expressed his pleasure with it and experimented himself with different kinds of lenses; he was great in experimenting; he was interested in photographic processes and laboratory work; he was not physically able to be in the studio very much; they had a ramp built so he could run his little car right in but seldom got out of it; he had a revolving house mounted on a turntable similar to those in a locomotive roundhouse, you turned a wheel and the whole house turned around and up in the roof was a compass showing the direction of the house and he had a large camera there that was too heavy to move around so that the whole house was moved to get the camera in front of the object to be photographed (6500-1); he had a long range telescopic lens that had been built for the German Government during the war, capable of making a large view at a distance of several miles; witness took a large number of pictures of the "Morgan" while she was at Fairhaven and after the "Morgan" was put in place, took a photograph of her from practically every angle; Green distributed these to people in both large and small pictures and also large photographs of himself (6501-2); Green was well posted in photography and had many technical books about it; that he heard Green at one time make the remark that if he stayed in Massachusetts longer he would be taxed more (6502).

On cross-examination by counsel for Texas, he testified that he never heard Green make a direct statement about his residence; that Green put about $20,000 in this photo-

graphic equipment and had everything money could buy; that he became interested in moving pictures and at the studio at the present time there are 50 or 100 cans of film (6503-4); about 1927, he was quite sick and after that he picked up but would have bad days when he would have to stay in the house; from that period on he was suffering from arthritis, bad teeth and water on the knee, etc., and was addicted to the use of bromo-seltzer, when they tried to keep it from him he would go down and get some and witness would bring him water and he took it very nearly every hour (6503-5); from the time he first knew him his health began to grow worse, especially in the last four or five years, and in the last couple of years he did not get out of the car very much; during the first two years witness was in the studio he only came to the studio about three times but he would drive up to the entrance and witness would go out to him (6506).

On cross-examination by counsel for Florida, witness testified that he began working for him in 1924 and generally closed the studio about two days before the Colonel left; the studio is still there but was not operated up to the time of his death; about 1928, was the last time it was operated; Green brought a man from Miami to work in the studio that year and he did nothing but moving picture work (6507).

On cross-examination by counsel for New York, witness testified that in the Winter the studio was closed, the cameras covered up and all chemicals that would freeze thrown away; the lenses were taken to the big house and stored (6509).

Zabina B. Davis, of South Dartmouth, testified he was formerly a contractor and in 1917 was in the building business in New Bedford and during all of the years had kept a personal diary which he produced for the benefit of counsel (6511-12); that the diary shows that on August 29, 1917, Green arrived off Round Hills with his steam yacht, sent for witness and he went aboard ship and Green told him what he planned to do and wanted estimates for different things; on August 30, 1917, witness wrote him a letter which was given in evidence as Mass. Ex. No. 419 (6509-14); that they received Mass. Ex. No. 420, dated September 4, 1917, from Green regarding the transfer of the Gideon Howland Farm,

the Round Hills Farm and any other property located or adjoining Round Hills in the name of Hetty H. R. Green, and gave estimates on clearing the rocks, etc., building a breakwater, bath houses, piping from the spring, etc. (6520-22); and sent Green in reply, Mass. Ex. 421, September 7, 1917 (6524); that they received from Green letter of September 10, 1917, Mass. Ex. No. 422 (6527), stating he was leaving on the following Sunday to discuss the estimates; that his diary indicates that on September 16th he met Green and took him and his gardener and secretary to the farm; Mr. Marshall, the secretary, had been there before; they went over the place and talked over the estimates with Green; on that occasion he was looking for a spring of water; Green spoke of that as being a source of supply for the tank or water tower and said he recalled it as a boy (6529); that he received a letter, September 27, 1917, Mass. Ex. No. 423, from Green describing what work was to be done (6532); that he estimated $90,000 for this work and on October 5, 1917, the diary shows he met Green and his secretary at the station, took him to Round Hills and located the buildings (6534-5); on October 24, 1917, a representative of the firm which had the contract for building the greenhouse arrived and during the intervening period they were engaged in doing this work and completed the wharf and water tower; on March 19, 1918, Colonel and Mrs. Green arrived and he went to Round Hills with them spending nearly the whole day and also met them there on the 20th; on June 21, 1918, was with Green nearly two hours in the afternoon and on June 25, 1918, met Green at Round Hills and launched the flood lights (6537-40); that his diary shows he saw Green about the work on July 8, 13, 23, August 3, September 2, 14 and October 7; on the last date, Green bought the South Wharf and they discussed its repair (6541-43); that witness was one of the owners and joined in the deed to Green; the diary indicates he saw Green several times in October, November and December (6544-47); that Green gave a great deal of attention to all of these improvements, was there and saw almost everything that went on and was very much interested in the work; his principal idea was to see that they had plenty of men to carry the work along; they worked steadily for about two and one-half years (6547); on May 31, 1919, saw Green at South Wharf; again on June 13 and 14, 1919; he gave him a plan of the boarding house containing 75 rooms to estimate on; that they had

not then started the Round Hills mansion (6548-9); they broke ground about this time; he saw Green on July 9 and on July 19 went to Round Hills to meet Mr. Bossom, the architect, and Green; he liked the little hotel "as they called the boarding house" (6550); on August 8, 1919, his diary shows that he went to Round Hills in the "Lydia" with Green and his family, showed him the plans and estimate for the machine shop, three steel garages, etc., for $73,000; that was not built until after witness retired (6551); on September 8, 1919, his diary shows witness was on the "Lydia" and talked with Mrs. Green about building a cottage on a separate hill from the main house but it was never built; his diary shows that on August 19 the "United States" sank in Padanaram Harbor (6551).

Witness identified Mass. Ex. No. 75, a chemical analysis of spring water (6552); and Mass. Ex. No. 424, February 25, 1918, his estimate for building garages to cost $19,000 (6555), and Mass. Ex. No. 425, Green's letter to witness March 7, 1918, authorizing the garages (6557); he further testified that on one occasion when they had 50 men working, clearing up the ground, etc., Green said he wanted 150 men on the work (6558).

On cross-examination, counsel for Texas gave in evidence Tex. Ex. No. 334, license issued to Green, of Terrell, Texas, July 17, 1918, to build and maintain a stone breakwater in Buzzards Bay at Round Hills, Dartmouth (6565); witness testified that during the years 1917 to 1919, while working for Green, he spoke about sending plans to Texas (6569); that the letters to witness came from his New York office; that when he first talked to Green about building at Round Hills, at the time of locating the boat man's cottage, witness remarked that some day he would want the house there and the boat man's cottage would be in his way, and he said, "Oh, no, I never will erect a house there; that is my house—and he pointed to the ship off in the water" (6570); later, when he handed him plans for an estimate, he said, "This will be all one wing of a child's institute," referring to the house (6571); that witness never heard of his voting or making calls at New Bedford and he never talked to him about avoiding any tax (6572); these conversations with Green extended up to about 1926; after that he has no recollection of meeting him; he always spoke of his mother with great reverence (6572).

On cross-examination by counsel for Florida, he testified that when he first came in contact with Green in 1917 it was on the yacht "United States" and he undertook to construct a wharf for her about 850 feet long but the Government would not allow it to project out because of the current (6574-5); this wharf remained there for sixteen or eighteen years after the "United States" sank and Green lost all interest in it (6576); that Mrs. Green engineered the cottage and got it as far as the plans and estimate and then gave it up (6581); that his business arrangement with Green terminated early in 1920.

On cross-examination by counsel for New York, witness said he refused to estimate on the building of the house because of the war conditions, etc.; that the water tower was built to furnish water for the ship (6584); that Green never mentioned at any time that he intended to make this place over into an institution or to turn it into an institution (6585); that at the time he started the Green house, he told witness "my sister and myself own this together and I have made arrangements to do what I want to do here" (6586).

On cross-examination by counsel for Florida, the witness identified Fla. Ex. No. 27, indicating certain work to be wrecked at the Round Hills Pier, dated July 31, 1932 (6594).

Thereupon counsel for Massachusetts gave in evidence Exs. Nos. 426, 427, 428 and 429, correspondence with P. J. A. Van der Putten relating to the furnishing of the Round Hills house, etc. (6602-6611).

Yvonne A. Jette, of New Bedford, testified she was employed by Green November 29, 1933, to August 7, 1936, in charge of his numismatic collection; remained at Round Hills about ten days that year, then went to Star Island and stayed there until June, 1934; came to Round Hills and remained until December, 1934; went to Star Island, staying until May, 1935, returning to Round Hills, where she stayed until November, and went back to Star Island, remaining there until April, 1936, returning to Round Hills when the Greens went to Lake Placid (6613-16); Green worked on his numismatic collection up to the time he became incapacitated; the last year he took up the modern collection of stamps—about the year before he died; during the intervening years, up to the time he started to work

on his modern collection of stamps, witness did not see any stamp collections around (6617); he worked on the stamps himself with his night nurse, Miss Salmon, and did not employ any special girl for this work (6618); witness' work was typing and putting the coins away and getting out any special kind that he wanted, packing the coins when they went from one place to another; it was his practice to take them but he did not take his stamp collection; Green devoted considerable time to his coins, especially during the evening; if he received new ones, he would look them up in his own catalogues and buy them if he did not have that particular coin and sometimes he would return them (6618); witness worked until eleven o'clock every evening and Green worked from time to time during the evening (6619).

On cross-examination by counsel for Texas, she testified he took his coins wherever they went and traveled with 30 trunks; at different times he spoke of having resided in the State of Texas and having helped to start a bank, about his friends and the things he enjoyed doing down there; he called it his legal residence; he seemed to have pride in his Texas citizenship; he went to Texas in 1935 and looked forward with anticipation to that trip because he had not been there for some time (6620); he went there because he wanted to go (6621).

In response to questions by counsel for Mrs. Wilks, she testified that on that trip to Texas only one trunk of coins went with him, the remainder came back from Florida to Round Hills, and in the Spring of 1936, he took one trunk of coins to Lake Placid, the other 28 or 29 were shipped directly from Miami to Round Hills (6624).

J. Edward Harris, of South Dartmouth, testified that he had lived there since 1919 and was General Superintendent of the Howes Construction Company which built Round Hills; he went on the job upon his arrival from New York June 28, 1919, and remained there until September 28, 1920; the President of his Company, Mr. Janoff, and witness outlined the house on the ground from the architect's plans and Green changed it about twenty feet and as finally located, Mrs. Green, at the Colonel's suggestion, turned the first spade of dirt; the excavation took about three weeks;

Green came there about once a day and as the building progressed, he spent some time there in the afternoon; the yacht "United States" sank in the month of August, 1919, and the Greens lived on their house boat "Day Dream"; Green was then able to get about without any assistance other than a cane; the original plan called for a wine cellar under the servants' wing in the rear of the house, which was planned to be built of six-inch hollow tile and the door furnished by Green was put on; when Green saw this vault after it was finished according to the plans, he took a hammer and broke a hole through it and said he would reconstruct it himself; in 1921, after he had been in the house the first Summer he had a portion of the cellar under the south of the house re-inforced with concrete and moved this vault down there from the rear of the building and stored his liquor in it; he said that he had bought the door in St. Louis at a cost of $11,000; it came out of a bank; this vault, as reconstructed, was built of one-inch rods (6625-30); throughout the entire house the electrical outlets in each direction on the ceilings and around the picture molding, etc., was spaced six feet on centers, as shown on the architect's plans; Green never said anything to witness about the reason for this or what he intended to do with the house ultimately (6631); Green moved into the house July, 1921; witness left the big house in September, 1920, but continued to live around there and do work for Green; Green built a dance floor on the end of the wharf, a combination laundry and garage and other small buildings (6632); he also laid a maple floor throughout the second floor of the building instead of the composition floors called for by the plans; between 1924 and 1927 or 1928, there were several years when witness did not work except to check up certain plans for buildings that Green contemplated elsewhere; in 1928, he built an addition to the power house and shop and put in the water system; converted what was the boarding house into a four or five family dwelling and did considerable work for the Institute of Technology; this was principally in 1929 and 1930 (6633-4); witness checked up plans for the Star Island house and plans for a house in Marlin, Texas, for his ward, Miss Dorothy Marshall, when she was married; also plans for a house which he gave Miss Ruth Lawrence for her parents; when the house was closed in December, seven

employees were usually left there—a carpenter, painter, cook, night watchman, etc. (6634-5).

Witness identified Mass. Ex. No. 109, an estimate made in April, 1921, of the cost of repairing the old Howland house for $2100; Green said he was planning an anniversary of the building of that house about two years hence and he wanted to fix it up and furnish it as it was in the old days but never got around to it (6637).

Witness further testified that the construction of the Round Hills house is monolithic—the chimneys are made of brick and run from the basement through the house and spaced so they come in the center of the rooms between the outside and corridor walls; the partitions are built of terra cotta blocks forming a double wall back of which are the plumbing pipes, etc.; throughout the second floor, it was permanent construction and there was nothing to suggest that the partitions were removable (6637); there was no concealed plumbing in the bathrooms except what connected directly with fixtures installed at the time the house was constructed and nothing to indicate that the bathrooms would be converted into sculleries, etc. (6639).

On cross-examination by counsel for Texas, witness testified that the terra cotta blocks of which the partitions were constructed bore no load; partitions could not be taken out and rooms changed easily because between each room was a bathroom which would have to be removed to make it into a large room; that probably three-fourths of the outlets were blind (6641); during the time he knew Green, he was not active in the social life of New Bedford; witness would not say that the house could be readily converted into an institution but could be changed as any other residence might be turned into an institution (6643).

On cross-examination by counsel for Florida, he testified he met the architect, Mr. Bossom, a dozen times during the construction of the house; this house was typical of modern home construction and was not different than any modern home of that size; that the house was built as a residence and they did not have to have a building permit from the Town of Dartmouth or comply with the State requirements for fire-proofing for public institutions, etc.; it would not satisfy the requirements of the Massachusetts law for public buildings (6644-6).

On cross-examination by counsel for New York, he testified that there is an old Howland house on the top of the hill known as the "Homestead" other than the one he mentioned, which is not used; that the old house he estimated on is enclosed with a stone wall near the burial plot on the north side of the property (6647); that he could not have told Mr. Cole, counsel for New York, in an interview that the architect had said the house was designed so it might become a hospital because the architect did not tell him any such thing (6648).

HARRY A. NEYLAND, of South Dartmouth, testified that he was an artist by profession and first became acquainted with Green in 1922 when he was painting on the Yacht Club Wharf at Padanaram; that Green then walked with a limp but got around comparatively well and drove his own automobile; in 1924, witness had an interest in the whale ship "Charles W. Morgan" and agreed to present it to the City of New Bedford if they would guarantee its maintenance; he discussed the matter with Green and told him that as the ship had been owned at one time by Isaac Howland, Jr. and Edward Mott Robinson, he thought he might be interested in its preservation; Green became interested and wanted to buy the ship and said, "I am doing everything I can to make Round Hills attractive as a memorial and I want that ship, it having been owned by my ancestors—I want that ship to go to Round Hills and stay there" (6642-6655); witness declined because it had been offered to the City of New Bedford but said that he would tell them the offer would be withdrawn October 15th unless accepted; Green said he would endow the ship with ample money if he could get it to Round Hills and witness told him Round Hills was not exactly the place for the ship, that anyone coming to New Bedford should be able to study not only the whale ship but the oil refinery, cooper shop and other industries pertaining to whaling and if he had those things at Round Hills, it would be the place for it; after further discussion, he told Green that if the City did not take it and he was willing to build a whaling village and endow the ship he could have the ship and suggested the organization of a corporation (6656-7-8); later, Green invited him to dinner and he found under his

plate a letterhead "Round Hill Repository of Maritime Antiquities and the Charles W. Morgan Enshrined;" witness suggested it be changed to "Whaling Enshrined;" witness identified certificate of incorporation of Whaling Enshrined August 26, 1925 (6658-9); that at the time the ship was offered to Green, it was at the wharf at Fairhaven opposite New Bedford and remained there during that Winter while it was being reconditioned and refitted from a bark into a ship; Green showed great interest in it and was there frequently; she was towed from Fairhaven to Round Hills and arrived there May 6, 1925; Green conveyed a portion of the land to the new Corporation (6662); witness made a brass tablet to commemorate the history of the ship for which Green paid; it is on the rock at Round Hills; he also designed four other tablets—for the "Wanderer", another whaling ship wrecked at Cuttyhunk, the foremast of which is erected in concrete back of the swimming pool at Round Hills, a tablet to the windmill, another for his mother and another relating to the landing of Bartholomew Gosnold; these tablets were started but never finished (6664); Green postponed the work in 1935, when times were hard and he said he was not going to spend any more out of principal and to postpone the casting of these tablets for awhile (6665); about that time his health had become very much worse and from then on there was a lessening of interest in affairs generally (6665); witness was present at Round Hills when his sister, Mrs. Wilks, discussed the joint ownership of the property (6666).

In 1924 or 1925, he spoke of the misunderstanding of his mother; that many of the inhabitants had unkind feelings towards her because of certain business dealings, which he felt were unjustified, and he intended to do all he could to overcome that ill feeling in this section of the country; on many occasions he expressed deep affection for his mother; in 1924 or 1925, he had a concrete foundation started in front of the swimming pool near the "Morgan" for a museum to house whaling gear, prints, pictures, books and other things of a maritime nature; later, about 1925, this was filled up (6671-2); about July 1st of the year of the Lindbergh Flight in 1927, Green said he was troubled by the mosquitoes and was going to fill in the marsh and build a croquet field so big he could land airplanes on it; he said, "I am a man of one track mind, I have been giving

all my time to Whaling Enshrined; the ship is well tak
care of and I would like to give my entire time now
the building of an airport, which will take considera
money, and let the matter of the Whaling Enshrined sta
over until we finish the airport, after which we can contin
that work" (6674); that they had a conversation about t
time he gave up the broadcasting station; he said he bu
it for the purpose of entertaining the public and as long
radio was in its infancy he was greatly interested in
but as soon as people began to get radios more extensive
in their houses he felt they were losing interest in th
radio station, and when they began to get them in thei
automobiles, that was the end and he immediately disco
tinued that service and turned it over to the Massachusett
Institute of Technology for experimental work (6675)
about 1927, his secretary, Marshall, brought him some lega
papers to sign and he said, "I see you have me still residin
in Texas" and on the side said to witness, "You know
have not lived in Texas for a good many years, not sinc
1911" (6675-6); that Green told him in 1924, when he firs
became interested in the ship, that he and his sister had
decided there was no reason why the Hetty Green Trust
should be dissolved; that she was anxious to have him
administer the estate and they were going to keep things
intact; he said he had increased the original investments of
his mother and she agreed with everything he was doing;
that he saw no reason to break up the unity of the estate
(6677). Witness received Mass. Ex. No. 222, telegram from
Green, June 8, 1927, about the anniversary of the Town of
Dartmouth and said that the flag prize referred to had
reference to a flag for the Town of Dartmouth designed by
the witness and Green offered $100 in gold to the Dartmouth
lady who would make a flag after the design and this was
the day when the prize was awarded. Mass. Ex. No. 209
was the invitation and program for the dedication of
Whaling Enshrined (6677-9); and Mass. Ex. No. 431 was a
booklet relating to the "Charles W. Morgan", which Green
had approved (6680); he further testified that Green con-
tinued to be a special life member of Whaling Enshrined
until his death; that in 1924, he was sitting in the little car
with Green watching the workmen engaged in the building
of the wharf, etc., for the ship and Green said, "I am so
interested in this place that I just hope when my time comes
I will be at Round Hills when I die" (6683-4).

On cross-examination by counsel for Texas, he testified that the conversation with Green and Marshall, in which Green said, "I see you still have me residing in Texas" was in 1927 (6685); that witness knew from what Green said he had paid his poll tax in Texas and that he had paid his income tax and Federal tax as a resident of Terrell, Texas, and when Whaling Enshrined was incorporated that he gave Terrell, Texas, as his residence, and also that he had had a conversation with the Tax Commissioner of Massachusetts relative to his becoming a resident of Massachusetts, which Green declined to do (6689).

On cross-examination by counsel for Florida, he testified that he was never on Green's pay roll and he never paid him anything for the work he did in connection with Whaling Enshrined (6693); that from his work and talks with Green, he gathered that the motivating idea in building Whaling Enshrined and gathering the various relics was to relieve the tension and ill thought that existed among the people about his mother by doing something of that character in the community, also to build what he wanted to consider as a Hetty Green Memorial to his mother (6695); that witness believes he implanted the idea of Whaling Enshrined in Green's mind and that Green had the idea his place would be the repository of maritime antiquities and the "Charles W. Morgan Enshrined" (6708); in 1924, when Green started to lay the foundation for the museum, witness helped him to obtain articles of considerable value, nautical curios, and turned over his collection of whaling gear; that the things he bought were brought originally to the house and stored in the cellar, garage and attic; whatever Green bought he paid a good price for and he bought quite a number of things and if all were gathered together, he would have enough for a large whaling museum; it is all at Round Hills (6716); that the foundations for the museum were covered over and a parking space made there; on one occasion when he had lunch with Green, witness inquired for Mrs. Green, and he said she had gone off in a huff but that she had made a very good suggestion before she left and that is, "I give up building a museum and use this house for a museum" (6718), referring to the big house in which they were at the time; that Mrs. Green also said she would like to build a small house up near Smith Neck Road and use the mansion for a museum (6719).

Fla. Exs. Nos. 28 and 29, photographs of the founda for a museum, were given in evidence (6720).

Witness further testified that in the Fall of 1924, asked Green why he didn't stay for Christmas with all work going on and he replied, "I cannot; I must leave be Christmas; you know I can't stay in Massachusetts months; I am afraid they will claim me as a resident tax me accordingly, and that I want to avoid; also I h bought property in Florida and I am anxious to get d there and start developing" (6722); he showed him pl of the buildings he contemplated erecting as a home Florida; he was very much interested and frequently as if witness could offer any suggestions and that he wo like to have him visit him there and look over the situati in 1927, or the year of the hurricane, he was quite exerci over the loss of some of his Royal palms and was anxi to return there to take care of the damage (6723); af 1924, his interest in Florida continued and after finish the airport he said, "As soon as times improve and I f a little better, I am anxious to finish our plans for Whal Enshrined, for I do not know that I can come up here a spend as much time at Round Hills as I should like; e time I come the doctors advise me against it, and I m have to spend most of my days in Florida, but each ti I go there I like it better" (6724); on several occasio when he was unable to leave Round Hills for a week or t days, he said he wished he was in Florida where he cou get outdoors (6724-5); he said he expected to make t "Charles W. Morgan" permanent as soon as the depressi was over and before he was given the ship he had promis to endow it as a memorial to the whaling industry; that t library at Round Hills contains much literature relating whaling and he gathered up books all over the country a sent them to this house (6725-7); that there is near Rou Hills house a concrete section of the whale ship "Wa derer" and the foremast which was salvaged from t wreck on the Island of Cuttyhunk in 1924; also flagpol from which were flown the house flags in the old days whaling from the ship's masthead (6728); there are al miles of anchor chains around the grounds and driveway (6728-9).

Witness admitted receiving a Christmas card, Fla. Ex Nos. 26 and 26-A (6730), and further testified that he i troduced Miss Angelina Jones, the founder of Sol-e-Ma

a hospital for children, to Green and he congratulated her on doing something in which he was much interested and which he had intended to do himself (6731). On cross-examination by counsel for New York, he testified that after 1932, he had charge of the "Morgan" and during the years 1932, 1933 and 1934, received no compensation whatever; the last two years he placed his name on the pay roll for a sailor's wages (6733); that most of the Summer residents left after Labor Day but some stayed later; that their Fall weather was frequently beautiful; that Green occasionally was unable to leave the house because of fog and dampness (6734); that some of the anchor chains at Round Hills came from the Charleston Navy Yard and were used for huge anchors in the Navy and had no particular bearing on whaling; there are also there some old whale boats (6736); Green told him he was trying to avoid paying taxes in Massachusetts; that the public was permitted to use the air field at Round Hills without charge (6737); that Green always like the Round Hills house for a home but mentioned its adaptability for a museum—that Mrs. Green had made a good suggestion; he never said to witness the house was too big for him (6739); did not tell witness that Mrs. Wilks had in mind turning the house into a home for old couples (6740); he said he consulted her pertaining to the estate and she was agreeable to everything he wanted to do or was doing (6741); Green told him he remained out of New York from 1933 on because of suits pending against Directors of the Chase Bank (6742-3). On cross-examination by counsel for Mrs. Wilks, he testified he saw Green the last time at Round Hills shortly after his return in 1935; that for a few years before his death he did not support the Massachusetts Institute of Technology operations (6745); that he cannot say that Green had lost interest in Round Hills by 1935 but his health had a great influence on his activities, but he wanted to continue building Whaling Enshrined (6746); in the years 1931 to 1934, he stayed at Round Hills until December and the doctors advised him not to spend so much time there and to seek a drier climate but he remained in spite of their advice (6747); that the public was never admitted to the Round Hills house; it was furnished and maintained as his private home (6748); that he not only said Whaling Enshrined was to be memorial of whaling days but also to

himself, his mother and sister and all of his ancestors because the beginning of the great Green fortune was in whaling (6749).

Upon being recalled for further cross-examination by counsel for Florida, witness produced one of the letterheads regarding Whaling Enshrined, which was given in evidence as Fla. Ex. No. 40; these letterheads were printed and used by Green on a few letters (6756-8).

Ruth L. Briggs, of Fairhaven, Massachusetts, testified that her maiden name was Ruth L. Lawrence and she first met Green in the Summer of 1917 while visiting Mrs. Wilks at her estate in Greenwich, Connecticut, when she was fifteen years of age, and came to Round Hills with them that Summer, spending the Summer of 1918 on the yacht "United States" anchored off Round Hills; that she went on little fishing trips and short trips to Newport and the waters of Long Island Sound (6760-4); that by agreement with her parents, she became a protegee of Green by which she was to receive a certain monthly income and spend one-third of her vacations with the Greens; that she is still receiving an income from a trust fund (6764-5); that Green sent her to St. Mary's School, Peekskill, New York, afterwards to the Wilkes-Barre Institute; she wanted to go to Smith College but he wanted her to go to Wellesley, which she did; while there she spent every Summer at Round Hills, except 1925, when she went to Europe and the Summer before she was married in 1926 (6764); Green also educated several other girls and seemed to want everyone to go to Wellesley; the Corley sisters did go there (6766); after her marriage, when she became a resident of Massachusetts, she was complaining to him about the taxes she had to pay that State and he said, "Why don't you go to Texas to live and you won't have to pay any tax" (6767); Green selected the clothes she wore at Round Hills but she was allowed to choose the clothes she wore elsewhere and made use of the order blanks—Mass. Ex. No. 376 (6768); that her husband is in the bond business in New Bedford and Boston and Green made purchases through him; witness was one of the incorporators of the Round Hills Radio Corporation; that 1924 was the last Summer she spent at Round Hills, and identified Mass. Ex. No. 432 as

a photograph of the little car in which Green rode in all kinds of weather (6769-70). On cross-examination by counsel for Texas, witness said that Wellesley College is a school attended by girls from all over the United States, a great many from Texas; that Green frequently talked to her about Texas and said he liked it because the Government down there was not as hard on him as it was up here and the politicians came cheaper (6771); while at Round Hills, she met a number of his friends from Texas (6772); his health began to decline about 1933, prior to that he enjoyed good health, although there were times when he was very ill and had blood transfusions (6774); during the last eight or ten years of his life he was a habitual user of bromo-seltzer and tried to hide it from his family and would go to New Bedford to get it and this undermined his health (6775).

Harry R. Bennett, of South Dartmouth, testified that he was Clerk and Treasurer of the Town of South Dartmouth and in July, 1917, was employed by Green as second steward on the yacht "United States" (6780); Green and Mrs. Green came aboard at the Columbia Yacht Club in July, shortly after their marriage and they sailed for Round Hills, stopping there about three weeks; Mrs. Stafford, Mrs. Briggs and Dana North were in the party; about October 31st, they started down the coast and struck a storm and went into Tampa, then on to Galveston, remaining there eight or nine days, and then to Aransas Pass, Texas, on a fishing trip; Green went ashore for four or five days at Galveston; they returned to New York and remained until they sailed for Round Hills in 1918 where they arrived about July staying there all season; that Winter the boat remained at the wharf at Padanaram and sunk there in August, 1919 (6781-4); with the exception of a trip to Block Island and a trip to New London for repairs, the yacht remained there until she sank; Green and Mrs. Green lived on the boat from July until the middle of October, 1918; he would leave on Tuesday night for New York and return Friday; after breakfast he would go to New Bedford in one of the speed boats, stay practically all day and come back late in the afternoon (6785); the foundation for the big house at Round Hills had started before the boat sank; the Greens stopped at the Tabitha

Inn at Fairhaven and in the boat "Lydia" until they got on the "Day Dream"; they had a crew of 72 on the "United States" and it was fully manned during the Winter of 1918 (6787); in 1918, Green purchased several other boats and they laid in a circle around the "United States"; he called it his Navy or Mosquito Fleet; each boat had a Captain and a flag and when the Colonel wanted any man to come along side to take him ashore or for duty, the flag on the "United States" would be raised; the Captains of the various boats would come aboard the "United States" at eight o'clock, have breakfast and then go to their various boats and wait for the flag (6789); he left Green's employment in 1924, when elected to his present position; in 1927, the Colonel wanted water from the Town of Dartmouth connected with his various houses at Round Hills and estimated it would cost $102,000 to install the water in his house; he made a written offer to give us the sum of $35,000 and take the rest in bonds, interest free; witness and the Chairman of the Board of Selectmen and others went to see him and he renewed his offer, but due to legal entanglements and not enough takers to warrant the expense, it fell through (6790); in 1917, Green's health was very good and he walked without a cane and up to 1924 his health was good.

On cross-examination by counsel for Texas, he testified that the "United States" was taxed in Massachusetts but the tax had to be abated because it was not in Massachusetts waters April 1st; that the assessment against the Round Hills property is about $600,000; that after 1921 there was a normal decline in Green's health; Green never offered himself as a voter in New Bedford or in Dartmouth (6792-7); that he weighed about 300 pounds when witness first knew him and when he died he weighed about 150 (6798). On cross-examination by counsel for Florida, he testified that after 1921 and 1922, Green started to sell this Mosquito Fleet as fast as he could and finally sold all of them with the exception of the "Lydia" (6806-7); he identified Fla. Ex. No. 30 as an assessment of the property of Green in South Dartmouth January 1, 1936, and same was given in evidence (6810); also identified a photograph of the "Lydia" and same was offered as Tex. Ex. No. 335 (6820); the United States Internal Revenue receipt for excise tax on pleasure boats paid by Green, "of Terrell,

Texas," for the year ended June 30, 1924, was given in evidence as Tex. Ex. No. 336 (6821).

EDWARD L. BOWLES, of Wellesley Farms, Massachusetts, testified that he was a professor of electrical communications at the Massachusetts Institute of Technology and a consulting engineer and had been engaged in the Round Hills Unit of the Institute since its inception about 1925; that he came in contact with Green through a visit made to him by Dr. Stratton; Green told him he had admired Dr. Stratton for the help he had given a group in which he was interested while he was Director of the Bureau of Standards at Washington (6825-6); witness was in charge of the administrative detail and the contact man with Green and tried to discover his interest in research work; Green said he wanted to develop some serious research work there and that the Institute could make use of his facilities, particularly the buildings equipped for experimental radio (6827); he told him of his pioneer work with the station WMAF and his development of facilities for wired radio (6828); he expressed a desire to have them make use of his facilities and develop their own problems; he later made the first grant of money and emphasized that they must recognize that putting these building facilities at their disposal represented a contribution; he later increased his contribution; up to July 1, 1926, their records show they were given $35,000 for their program beginning November 1, 1925; in 1926-27, there was $5,000 in money and $2,000 in facilities; in 1927-8, $10,000; in 1928-9, $20,000; in 1929-30, $40,000; in 1930-31, $20,000; in 1931-32 about $20,000; in 1932-33, $20,000 and in 1933-34, $10,000—all monetary contributions and in addition they were given the use of the buildings (6830); they had the use of radio building No. 1, the original broadcasting station with numerous electrical facilities; No. 3, a building in which there was some equipment for the study of radio with reference to navigation and building No. 6, which was placed at their disposal without equipment; in 1928, he gave them a large dwelling house as quarters for their men, building a two-car garage and gave them the use of a pavilion; later he permitted them to use a building which was made into a dwelling; the Institute supplied additional

funds to put them into use (6832-3); they induced the Goodyear Company to put a dirigible at their disposal and Green gave the money for building a hangar for it in 1929 and the Goodyear Company gave $2,300 to complete some details in the structure (6833-4); in 1931-2, they were given the use of the broadcasting station near the Colonel's house and later he turned it over completely for use in connection with the fog dissipation program and it has been used by them up to within the past two or three months; they also had the use of the machine shop and machinery at Padanaram Wharf (6834-5); Green never withdrew the use of these facilities although in 1933-4 he discontinued his monetary contributions; during the entire period up to Green's death, they were furnished power and water without charge and telephone lines and the cable facilities on the estate (6835); they first began to experiment to improve radio transmission and erected two radio stations—one an amateur and the other an experimental station, and in connection with the latter, had another experimental station at Cambridge and made an extensive study of what is called fading, one of the vagaries of transmission; Green and the Institute became very much interested in aviation and they made a study of radio service to aid navigation of aircraft in fog and put it before him (6836-7); while their radio experimenting was going on, their station was very serviceable in connection with the Vermont flood in 1927 and Round Hills was one of the principal contact stations; the people in Boston could not get in communication with Vermont and this enabled them to keep in contact with the families and helped a great deal during the disaster which pleased Green, because he saw it was becoming quite a public service; also during the sinking of the "Vestris" the station was very active in the rescue work and was one of the first to pick up radio news of the "Hindenberg" on her trip here when communication was lost for several hours; they also kept in communication with Byrd's Arctic or Antarctic Expedition and handled a tremendous amount of the traffic between the men down there and their families (6837-8); Green was kept fully informed by reports and by the witness of these activities and if they did not keep him in touch, he began asking questions; he followed their experiments and witness was amazed to find the way in which he was able to understand what they were trying to do in some of these detailed researches (6839); in con-

nection with their work on radio aid to aerial navigation, they put before Green a program for the study of navigation of aircraft in fog, made an extensive study of short radio waves with reference to radio signals and witness believes found the only answer to that problem (6840); they also made a study of the scattering of light and gave Green practical information on this subject for use in his own airport, developed a sound-measuring instrument so sensitive that if used with an amplifier it will respond to the temperature variation in the air; this experiment led to the study of fog dissipation which pleased the Colonel extremely and of all the work they did it probably impressed him most; by their present experimental equipment they can open up a tunnel along the surface of the Round Hills airport about 150 feet wide on an average, about 3,000 feet long and 70 feet high, so that airplanes if brought down into the tunnel by means of radio can land by contact flying, and they are now negotiating with commercial interests to continue that problem (6841-2); after Green felt he could not continue to give financial support for the fog dissipation problem, they interested the Bureau of Air Commerce and the Army and Navy sufficiently to work with them under a contract at Round Hills for three and one-half years, with Green's permission, and while so engaged, they kept him fully informed; the Institute became interested in high voltage development problems in what the newspapers called "atom-smashing" and they used the M. I. T. dock at Round Hills to house their experimental generator which has recently been brought to a point of completion at Cambridge (6842); that there was an obvious change in Green's health in the Fall of 1932, when he had a serious illness and blood transfusion (6843-4); in a conversation with Green, the latter said the doctors had finally succeeded in persuading him he had either to follow their instructions or expect to go any minute; that he must get away and take extreme care of himself and confine himself most of the time to his bed if he wanted to live on for awhile; that witness saw him at both Round Hills and Miami and from that time on he seemed to have generally lost interest in everything (6845); prior to that he took the keenest interest in their work; he could get into the airship hangar in his car, through a special door, and at their laboratory he would look through the door and they would bring things out to show him and make

sketches to illustrate what they were doing (6845); after the Fall of 1933, he would go off the estate for a short ride but witness does not recall ever seeing him stop, as in the past, where the activities were going on; prior to the 1932 illness, Green, in speaking about his health, said he was going to go to Round Hills and continue to go there and if he was going to die there, that was that, "because he wanted to be there" (6846-7); in working in collaboration with the Government, they were permitted to disclose to Green the nature of what they were doing (6847).

Mass. Ex. No. 355 is a copy of a joint invitation from the Massachusetts Institute of Technology and Green to the research laboratories at Round Hills, November 23, 1935, and was attended by Green; it was the day he left for Florida (6847-8); that they started out with one man in connection with the staff at Tech and then had as many as nine or ten at Round Hills and went as high as fifteen at one period; at the present time there are two men there; up to the time of Green's death they had seven men there (6848); Green remarked on one occasion that market conditions being as they were he seriously questioned whether he was justified in spending a certain sum of money on research work when that same amount of money given to a small bank might keep it from closing and previously, when he gave them $70,000 one year, he pointed out it was a particularly good year (6849).

On cross-examination by counsel for Texas, he testified that the experiments they conducted with Green were with a view to their general value to the public but he wanted Round Hills to stand out; he contributed about $150,000 (6850-1).

On cross-examination by counsel for Florida, witness said in conducting the experiments at Round Hills sometimes he would come down for a day and spend the night; sometimes stayed two or three days (6855); that Round Hills was one of the best places on the coast to study fog dissipation (6856).

Witness identified Fla. Exs. Nos. 31 to 36 (6862-6879), correspondence between the Institute of Technology or witness and Colonel Green in 1934, in which appeals were made to him for contributions to the experiments at Round Hills, and stated they got no more money but he continued to let them use the property (6879).

On cross-examination by counsel for New York, he testified that on one occasion Green said regarding the large house he had the rooms arranged so that the ceiling in one of the first floor rooms could be removed to make an assembly room or something of the sort (6882); he also said that his physicians had argued with him about Round Hills but that he was going to come back to Round Hills anyway because that was where he wanted to be (6883); that witness wrote an article for the Technology Review, October, 1934, entitled "Science at Round Hills", the opening sentence of which reads:

"Spectacular demonstration such as the dissipation of fog and the generation of the world's highest direct voltage have called attention from time to time to the unusual research station operated by Massachusetts Institute of Technology amid the surroundings of the magnificent summer estate on Buzzards Bay" (6885).

HERBERT D. HILL, of South Dartmouth, Massachusetts, testified that he was resident manager for the Round Hills Estate and had been in Green's employ since September 1929, first meeting him in 1926; was general superintendent of the airport from 1929 until Green's death; in addition, he had charge of the flying school for training, repairs, gasoline storage, etc.; that the equipment at the airport was the best that could be bought; they also had a crash wagon and equipment for hydro as well as airplanes (6885-7); there was a ramp 150 feet long running out into the Bay; the field had a Government rating of A-1; with a four-way field which was unusual at that time; the Bert Hill Flying School was for training students and was run as close to cost as possible to keep down competition with those who had to make money and in order to get as many boys as possible (6889); at one time, in 1929 or 1930, they had 42 students at the School and it gradually dwindled; no landing charge for planes was made and every facility was offered in the way of gasoline, oil and repairs, furnished at less than prevailing rates (6889-90); the number of planes using the field in the course of a year averaged from 200 to 275; the field was maintained until January 30, 1937, and had been continuously in operation up to that time (6891); if some unusual plane came in, Green would come down to

look it over, ascertain the owner and pilot and discuss the plane with them (6891-2); he purchased a plane in 1929 known as the "Miami Maid", a flying boat made in Florida, and presented it to Mrs. Green; it was kept at Round Hills; Mrs. Green and some of the wards and her friends used it; there was also two or three Goodyear blimps, with names like "Mayflower," "Virginia" and "Reliance" (6892); the first blimp was used in connection with the Massachusetts Institute of Technology for radio experiments; in 1930 or 1931, Green went up in a blimp and a moving picture was made and privately shown at the Capitol Theater in New Bedford (6893); Green would come down in the afternoon and discuss with witness the flood lights, revolving beacon, etc., at the airport (6894); Green had the "Lydia" converted by putting bunks on the deck to give outings to crippled children and it was used by the children from the Sol-e-Mar Hospital; the boat would pull up along side of the "Morgan" so the children could see it and the airplane field; if the weather was suitable they would cruise around and go outside the breakwater; at one time he had an airplane meet for crippled children at the blimp dock and gave prizes; he also provided a bus for the transportation of girls to the public schools at Dartmouth, and identified Mass. Ex. No. 433 as a photograph of the bus (6896); it was not confined to the employees at Round Hills but picked up the children at their homes and brought them back; this continued all the year round until the license expired in 1936 (6897-8); Green had a knowledge of aeronautics, read books on the subject and could discuss the matter intelligently with the mechanics, etc.; in 1932, witness had a conversation with him in which he said he was glad to get back to good old Round Hills and on a previous occasion he said he didn't stay longer because he was afraid of the Massachusetts tax, that he was limited to six months; he frequently spoke of it; the first conversation about it was shortly after witness' employment in 1929; witness asked him once why he didn't stay longer and forget about the tax and he said when it got around December it got a little cool for him and witness suggested that he come a month earlier and get acclimated so he could stay longer and he said, "Probably I will in the future, but at present things are not just right for me but I may in the future stay the year round;" he said he would like to spend his remaining days at Round Hills (6899-6900); when he left Round Hills

in the Fall, seven servants were usually left in the house—painter, carpenter, houseman, bus driver, cook and housekeeper; four ate and slept there; he also had on an average of from fourteen to sixteen employed in the power house department and 24 or 26 on the Farm; these latter were maintained the year round, with the witness and his assistant at the airport station, and the man in charge of the boat house; they lived in one of the houses on the estate; shortly before his death, Green installed an oil heating system in the house, a larger unit than the former one (6902); flowers were brought from the conservatory to the house every day; after 1932 or 1933, there was a perceptible change in the Colonel; prior to that he got around regardless of weather and even after his health failed in 1933, he would go to town on bad days in a big closed car (6903).

Witness identified Mass. Ex. No. 434, a photograph of outboard motor race and trophy, presented to the New Bedford Yacht Club by Green July 16, 1930, and same was given in evidence (6905). Upon examination by counsel for Texas, he identified Tex. Exs. Nos. 337, 338, 339, 340, 341 and 342 as photographs of various signs relative to parking at Round Hills, and the same were given in evidence (6908-11).

Witness further testified that Green told him his interest in aviation and balloon races dated back to his days in Texas (6913); he never rode in an airplane but at one time he took one ride in the blimp (6914-17); in addition to saying to witness that he could not stay in Massachusetts over six months on account of income taxes there he also said it was getting a little chilly; that going back and forth to Florida—going back and forth—the trip alone would tire him, his blood was getting thinner and he was getting older (6919); that witness is now employed by the Special Administrator of the Estate (6922).

Tex. Exs. Nos. 343-A-B-C-D-E-F-G-H-I-J-K-L, being applications from Edward H. R. Green, Round Hills, South Dartmouth, Massachusetts, and Terrell, Texas, for motor vehicle registrations in Massachusetts for the year 1936, were given in evidence (6929-6951).

On cross-examination by counsel for Mrs. Wilks, he said that the plane "Miami Maid" was sold by him for Mrs. Green during the past year.

Thereupon counsel for Massachusetts gave in evidence Mass. Ex. No. 435, letter from Green to C. J. Callopy, Presi-

dent of the Motor Sales Company, of New Bedford, June 1931, and Mass. Ex. No. 436, an order on the Commodore Biltmore Garage enclosed therewith, regarding the delivery of a Lincoln car purchased (6954-6).

FRANK C. TAYLOR, of New Bedford, testified that he was a contractor and did work for Green around Padanaram in 1917 (6959-61); he further testified that his first work was replacing the mooring for the yacht "United States" in 1919, building a retaining wall at Padanaram, repairing the wharf there, work connected with various whaling memorials, salvaging the mast of the "Wanderer," moving the blacksmith shop, the whale and oil works, etc.; that the work on the "Charles W. Morgan" was begun in 1924 and various jobs done on it up to 1934; the blacksmith shop from 1925 on; on the various whaling memorials the work started in 1924; the radio work in July, 1922, and continued to 1927; the broadcasting station, experimental station, tower, etc., from July, 1922, to January, 1923 (6964-6); the airplane and flying field work ran from July, 1927 through 1929 (6967-9); he did other miscellaneous work at Round Hills between 1921 and 1926; built the foundation for the "Charles W. Morgan" museum between November, 1924 and February, 1925 (6970); this was discontinued because Green said it would obstruct his view from the house of the ship and he wanted to see the ship from the house (6971).

On cross-examination by counsel for Texas, he said that to do these various jobs it was necessary to make application for permit to the Commonwealth of Massachusetts and to the Federal Government and Green instructed his foreman in making out the blanks to put in his residence as Terrell, Texas (6972-3).

On cross-examination by counsel for Florida, he testified that Green seemed interested in the various works up until around 1930 and they did not see him much after that; no improvements were started after that (6976-7); witness identified Fla. Exs. Nos. 28 and 29 as correct photographs of work done on the concrete foundation which was afterwards filled in (6978), and Fla. Ex. No. 37, a list of invoices rendered by witness to Green for work done at Round Hills between 1920 and 1937, aggregating $1,252,850.79 and to the Round Hills Radio Corporation, $140,575.60 was given in evidence (6981-2).

JOHN M. BULLARD, of Dartmouth, testified that he was an attorney at law practising in New Bedford and a member of the firm of Crapo, Clifford, Prescott & Bullard, which was founded in 1811 by Timothy Kaufman and is one of the oldest firms in Massachusetts; this firm was engaged in the litigation over the Estate of Sylvia Ann Howland, in which Hetty Green was concerned (6994); his first contact with Green was in 1922 in connection with obtaining a broadcasting license and he formed the Round Hills Radio Corporation for him in 1922 (6995); afterwards he caused it to be reorganized into a charitable corporation under the law of Massachusetts; witness identified Mass. Ex. No. 142, August 15, 1923, as the certificate of this Corporation (6997); this corporation still continues; that he has prepared a certified extract from the minutes of the Corporation and the same was given in evidence as Mass. Ex. No. 437 (6999, 1710-24).

He further testified that he had a number of conversations with Green about possible changes in the tax laws of Massachusetts referred to in his letter to Green May 29, 1930, Mass. Ex. No. 287, and in his earlier connection with him, had occasion to draft legal papers for him from time to time, in which Green directed him to give his legal residence as "Terrell, Texas"; that Green never changed these instructions; that the slogan of the radio broadcasting was "The Voice From Way Down East" (7031); that witness, as a member of the New Bedford Country Club, discussed with Green taking out a full voting membership, a resident membership, and when he mentioned that the Club was trying hard to sell bonds, Green asked what was the greatest amount any one had taken and witness told him $5,000; he said, "I will take that amount" (7032-3); that Green's social friends around New Bedford were confined to three or four families; towards the end, when he was not feeling well, he kept complaining about the thinning of his blood and said the doctor wanted to drive him from the seashore, but he did not want to be driven away (7034).

On cross-examination by counsel for Texas, he testified that Green, in connection with the formation of the Round Hills Radio Corporation and Whaling Enshrined gave his residence as Terrell, Texas, and his Post Office as South Dartmouth (7036); he designated himself as a resident of Terrell, Texas, in all papers witness drafted for him (7037-39).

Thereupon counsel for Massachusetts gave in evidence Mass. Exs. Nos. 438 and 439, letters from Green, March 22, 1918 and March 27, 1918, to Peter C. Keith, regarding the Joseph Howland Farm (7049-53).

At the hearing at Miami Beach, Florida, April 11, 1938, counsel for Massachusetts gave evidence tending to prove as follows:

Nick Natsis, of Miami, Florida, testified that he was employed by Green in November, 1935, at Star Island as help's cook and remained until six months after his death, leaving about May 3rd for Round Hills; that 24 servants were employed at Star Island and all of them went to Round Hills under orders from the steward (7452-5); that at Miami that Winter Green had a new Lincoln car with Massachusetts number plates and Mrs. Green's personal car also had Massachusetts number plates (7455-6).

On cross-examination by counsel for New York, witness testified that the new Lincoln car was purchased in New Bedford and came down with the Massachusetts plates on it (7457).

On cross-examination by counsel for Florida, he said that he did not see any Florida licenses on the two cars (7471).

Counsel for Massachusetts gave in evidence the following Massachusetts Exhibits:

Nos. 441 and 442 in July, 1922, relating to broadcasting activities at Round Hills (7483).

Nos. 443 and 444, correspondence with Green in September, 1926, thanking him for the assistance rendered to the New Bedford Kiwanis Club in helping cripped children of New Bedford with an outing (7487-90).

Nos. 445, 446 and 447, correspondence between Green and Alfred C. Bossom, architect, from September 3, 1919 on, relating to Round Hills; No. 448, correspondence from the files of the estate, called the Bossom file, listing fixtures, etc., for the "Green Residence" at Round Hills (7490-7500-7502).

No. 449, letter from Green to Bossom, April 30, 1920 (7512).

No. 450, letter from Bossom to Green, May 10, 1920, regarding changes and extras (7516);

No. 451, letter from Bossom to Green, May 10, 1920 (7522), in which he says:

"In accordance with your wish that if we do not hear from you, we would proceed with your house exactly as originally called for—really Colonel, I must confess I am pleased you have made this decision not to change, for we have been so frequently told that you expected this, or expected that which had not been called for, it really made the situation look particularly embarrassing.

The adherence to the original arrangement, of course, will not give you the most handsome house which undoubtedly Mr. Van der Putten wanted to give you, but it is what we understood you were desiring. We did not anticipate in the original estimates that you wanted a very grand mansion. You wanted a large home, but not over sumptuous. For instance, as you know, your contract called for wood staircases with wood balustrades, which will be very satisfactory from every point of view, but we were instructed that you wanted a marble staircase with an iron balustrade.

Under the circumstances, I believe you realize the difficulties that we have been endeavoring to overcome, but this decision on your part puts matters back to where you started out from and will in the end, I can assure you, work out along the lines that you discussed before the work was undertaken. The house is a large simple home, from which I am sure you will undoubtedly get a great amount of pleasure. Again, as regards the fixtures, you distinctly told us that you wanted fans underneath these in certain rooms, but in turn we received word that these would not go in. We are revising these fixtures back to the lines that you talked to me about" (7523-4).

No. 452, Green's reply, May 22, 1920, to Bossom (7527), which concludes with the statement:

"My contract with the Otis is for $4,000 or $5,000, the exact amount I do not remember. Mr. Zimm told me while in my office that the elevator would be put in according to the constructions of the blue prints and now they want $30,000 additional for the frame. I do not want a Mansion or Palace built over a freight elevator, so we will cut the elevator out" (7530).

No. 453, letter from Bossom to Green, December 16, 1920, in which he says:

"Your dining room, as you know, under the contract with the Howes Company is panelled in mahogany, but Mr. Vander-Putten in his specification wanted to have this painted. Naturally, I am sorry to see paint put on mahogany when we can make a very fine job, which I feel would be more satisfactory to you than paint. Whichever you desire I would like to do, but I would recommend that we use the mahogany finished the same way as your furniture that is going in this room" (7533).

No. 454, letter from Green to Bossom, December 20, 1920 (7537), in which he says:

"In regard to your letter of the 16th inst. paragraph #2, referring to contract with the Howes Construction Co. Mahogany will be perfectly satisfactory to me for the dining room—I would say that Mr. Vander Putten has nothing whatever to do with the house and I have told him that specifications called for in the original contract must be let alone. I also agree with you that mahogany is more appropriate and more elegant than any painted woodwork."

No. 455, letter from Bossom to Green, April 5, 1921 (7539), in which he says:

"I trust you found the house to your satisfaction and I do feel that it is going to be a very delightful home when you have it all completed. I would like very much to go up to South Dartmouth and go over the house with you" (7540).

No. 456, letter from Bossom to Green, May 18, 1921 (7542), enclosing drawing locating tennis court, etc., sketch of the granite and tile work under the portico.

No. 457, letter from Bossom to Green, June 13, 1921 (7545), giving an estimate of the cost of the additional granite and tile work for the portico.

No. 458, letter from Green to Bossom, June 13, 1921, accepting the estimate for this additional work (7547).

No. 459, letter from Bossom to Green, December 1, 1921 (7550), in which he says:

"Naturally I was exceedingly sorry to hear of the very hard time you have been having, and I trust that you are well on towards complete recovery.

In receiving the final check, as I did from you the other day, I want to let you know that, although the building conditions were during the time of the construction of your home more complicated than they have ever been in the history of the world, the intercourse that your building brought me into with yourself certainly was a most delightful experience. I might almost say a liberal education. Although the work is finished it would certainly be a delight on my part to continue the friendship that developed during that time.

I want to thank you for having entrusted the work to me, and I do sincerely hope that the home is going to be a source of great pleasure to you for many years to come."

No. 460, list of car movements for Green from New York to Marlin, Texas, and New Bedford and Miami in 1922, 1929 and 1932, from the records of The Pullman Company (7551-2).

Maurice J. Sullivan, of Galveston, Texas, testified that he was Manager for the United States National Bank Building and the Prudential Building in that City; prior to that was with the contracting firm of James Stewart, New York City, and employed by Alfred C. Bossom from July, 1919 to October, 1928, on E. H. R. Green's residence, South Dartmouth, the Magnolia Building, Dallas, Texas, the United States National Bank in Galveston, an addition to the Adolphus Hotel in Dallas and other buildings in Texas, Virginia and West Virginia as architect's superintendent (7556-7); that during the war he was civilian assistant to the constructing quartermaster at Camp Merritt at New Jersey and before that served with various contractors in New England; that he has examined N. Y. Ex. No. 90, architect's drawings, N. Y. Exs. Nos. 91 and 91-A and B, electrical plans for the Round Hills house; before going to the job at Round Hills he spent about three months at Bossom's office acquainting himself with the plans, details and specifications and had several conferences with Bossom and his associate architects (7559-60); that he went to Round Hills in July, 1919, and was there continuously Winter and Summer until it was completed to the smallest detail in July, 1921; he saw Green for the first time the latter part of July or the first part of August, 1919 (7560), and quite

frequently during the two years, probably 50 times; that he gave particular attention to the smallest detail throughout the construction; witness made daily reports to Bossom; he was an Englishman and left for England in June, 1926, before witness left the employment of his office (7561); they stopped operations in this Country shortly after 1928; in his daily reports, this job was designated "Colonel E. H. R. Green Residence;" saw Bossom from time to time and he never told him at any time that this was designed for some other purpose than a residence (7562), nor did Green ever make such a statement; about 1920, witness had a conversation with Green about electric outlets and asked him why he had so many and he replied, "I have never been in a house yet where there have been enough electric outlets and fans and I don't, don't want any unsightly wires running from one live plug, live outlet, all over the room, and I want to be able to pick up or put a fixture wherever I want it" (7563); witness has examined the plans of the Star Island house and found a profusion of outlets (7564); that the foundation walls of the Round Hills house were built of rubble stone, nearly 30 inches thick, the walls of the building were of masonry construction consisting of granite base with a common brick construction about 18 inches thick and the interior of the house was of reinforced concrete columns, floor slabs and framing; the house was not steel framed; the only structural steel used was to carry the roof supported by small steel columns to the third floor; they rested on small steel columns carried through to the basement; that the testimony of the witness Howes that it was constructed exactly like an office building or apartment house, with a steel frame, was not correct (7564-6); and thereupon the witness, by using Mass. Ex. No. 461, gave further testimony as to the construction of the Round Hills house (7566 to 7584).

He further testified (7576) that there were no concealed plumbing fixtures and never heard from Mr. Bossom or from Colonel Green or any of Bossom's assistants that there were plumbing lines installed to be introduced to or converted for use in pantry sinks, etc., pertaining to an institution or hospital; that the third floor was completely finished and not left open (7577); that neither Colonel Green nor Mr. Bossom ever told him that although it was called a residence on the plans it really was not; nor were the interior partition walls constructed in such a manner

that they could be easily removed; that in the main living rooms of the first floor were fireplaces and the chimneys of those fireplaces extended from the foundations in the basement through the first, second and third floors to the roof (7579); that the floors in the house were oak and outside was a terrace extending from the sun room along the east front, which was tiled to make dancing easier on the terrace (7580); that if Chamber No. 7, for instance, were divided so as to make two rooms, each one with a window, would be approximately 8 feet 9 inches wide by 8 feet 10 inches long (7582), and Chamber No. 1, Mrs. Green's, if similarly divided, would make a room 12 feet wide by 30 feet 6 inches long approximately and Colonel Green's chamber would be the same (7583).

The witness further testified that he talked with Colonel Green about the electric fans and he said that when he was living in Texas they had such fans and he wanted them in his house but made them reversible or "updraft" so that when he was sitting in the library reading he wanted to pull the heat coming from the radiator to the ceiling and throw it down to the floor and circulate it in the room, and "he intended to use his fans in the Winter time" (7584-5); that in the late Winter of 1920 and in the early Spring of 1921, Green said he was anxious to get into his house, he was tired of living in an apartment in New York and he wanted his home finished (7585); that in one of his conversations with Colonel Green he told him that he had been to Wellesley the day before to enter Ruth Lawrence and that he considered it a good College, one of the best in the Country and besides that "I want Ruth Lawrence to be near home" (7586); that he had a conversation with Mr. Hartwig, chief designer in the office of Alfred C. Bossom in the latter part of September, 1927, and asked him if at any time there was any real idea of an institution; he said, "Yes, there was, but when they got working on the drawings or sketches, preliminary sketches, in trying to work out an institution when the primary reason was a residence, they found they could not do it and entirely abandoned the institutional idea" (7589-90); that he saw Colonel Green in Dallas, Texas, some time about May, 1922, and asked him how he enjoyed his home or residence and he said he was very well pleased with it; that while the work was in progress, Green was in good health and walked under his own power with a cane; he never made a visit to the house

without going entirely through the completed portion and climbed up the temporary stairways, etc. (7591); that there was an intention at one time and a drawing was issued for putting Round Hills House on the frieze entablature over the portico, but it was abandoned (7592); he never saw the tablet with Colonel Green's initials on it described by the witness Neyland (7594).

On cross-examination by counsel for New York, he testified that the conversation with Hartwig took place in his office on East Forty-third or Forty-fourth Street, New York City; that they were close friends (7603).

On cross-examination by counsel for Texas, the witness testified that from one-half to two-thirds of the electric outlets at the Round Hills house are blind outlets (7623); that in the Star Island house a profusion of blind outlets are shown on the plans (7624); that if the stone was brought to Round Hills with Green's name or initials on it, he never saw it (7627).

On cross-examination by counsel for Florida, witness testified that he never went through an architectural or engineering college (7634).

On further cross-examination by counsel for New York, he testified that none of the people employed on the Round Hills house during the construction ever said anything to him about the house being designed for an institution (7656-7).

Counsel for Massachuetts gave in evidence Mass. Ex. No. 53, a letter to Lucius Boomer, President, The Sherry-Netherland, from Green, December 29, 1932, in which he said:

"I would much prefer to continue under present arrangements, with the understanding, that commencing January 1st, 1933, my rent for apartment T.24 with terrace be billed to me at 75% of the amount I have been paying" (7663).

Counsel for Massachusetts called attention to the fact that in connection with Tex. Ex. No. 277, the original poll tax receipts of Colonel Green, there was no evidence that he had voted in Texas after 1920. This was conceded by counsel for Texas (7665-7).

James A. Dixon, of Miami, Florida, testified that he was a member of the Bar and of the firm of McKay, Dixon &

DeJarnette and is curator of the Florida estate of Colonel Green, appointed December 7, 1937 (7668-9); prior to that time Mrs. Green, as Ancillary Administratrix, was acting as representative of the estate; since his appointment, he has been in charge of the Star Island house and had it placed in its complete furnished condition for view with the exception of rooms in which the contents were removed by Mrs. Green as the result of her settlement with Mrs. Wilks (7670); also had the grounds dressed up to make the place look as attractive as possible (7671); that at the Star Island house are a number of films of moving pictures taken at various places, in some of which Colonel Green appeared, which show various activities in and about the property (7672).

On cross-examination by counsel for Florida, the witness testified that two tables were taken out of the Palm Room—a Louis XIV and Marie Antoinette, and a rug was taken from Mrs. Green's dressing room with the furniture, and two small rugs from the lower floor (7681).

Charles W. Keyes, of Coral Gables, Florida, testified that he was a representative of the Metropolitan Life Insurance Company and knew Green while he was a systems expert for the Remington Rand Company dealing in filing systems (7688); that in the latter part of 1930 or the first part of 1931, Green applied to him for some method of filing currency bills so they could be displayed and he designed a contraption for holding and displaying the bills without being handled (7690); the latter part of April, 1931, he went to Green's Star Island home and Green said he was going to leave pretty soon and witness asked him where he was going and he said, "I am going back to Massachusetts;" witness said, "Colonel, you have such a beautiful place down here why don't you make this your home," and he said, "Well, this is just a place I come to reside in the wintertime; I have a beautiful estate up there (7692).

On cross-examination by counsel for Florida, witness said the Star Island home was outstanding; the gardens were beautifully kept and there is no better place around anywhere; it was a show place in Miami Beach (7693).

Thereupon, counsel for Massachusetts announ-ed his testimony closed.

Florida Evidence

At the hearing in New Bedford, Massachusetts, in February, 1938, counsel for Florida gave evidence by the following witnesses tending to prove:

HENRY F. LONG, recalled as a witness for Florida, testified that he had been Commissioner of Corporations and Taxation for Massachusetts since 1920; that the Massachusetts income tax law was passed in June, 1916, effective January 1, 1917, and has been in force ever since, and that it was his duty to administer it; that this law requires all inhabitants of the State to make a return of their taxable income annually and he has endeavored to enforce it to the best of his ability (7058-60); the law does not require a return of all income regardless of amount, it is only when income is subject to tax imposed by the Act that they are required to make a return, which begins at $2,000; that Massachusetts has a classified income tax, really four laws in one; the business income, which is that which flows from professions, trade or employment to which the $2,000 limitation applies, a tax on annuities and a tax on gains from dealings in intangibles, and the fourth class is laid on taxable interest and dividends; that from the returns there are certain exclusions and deductions for exemption; that it is his duty, when it comes to his knowledge that an inhabitant of the State who is subject to the Act refuses or fails to make a return, to assess him under the law by notification to file and if he does not file, to assess in such amount as the Commissioner may determine, plus a penalty provided by the statute (7065); a notice to file such a return was sent to Green, but no assessment was made; this notice was mailed some time in the early part of 1936 to South Dartmouth, Massachusetts, but witness did not know where he was; nothing further was done up to the time of his death and nothing has been done to follow it up since then (7067); in November, 1928, witness had an interview with Green at South Dartmouth by appointment made through the Assessor of Dartmouth (7068), and identified Fla. Ex. No. 39 as a photostat copy of his letter to Green November 20, 1928, confirming the appointment (7070); that he called upon him at his home before Thanksgiving Day, 1928 and discussed the matter of paying income taxes to Massachusetts (7072); nothing further was done in his official capacity

between that time and the notice sent in the early part of 1936 towards getting a return from him on his taxable income in the Commonwealth of Massachusetts and Massachusetts has never received an income tax return from Green and did not resort to any process of law to compel such a return until the notice sent in 1936 (7073); under the law, they have two years in which to compel a return from an individual subject to the Act; within two years an assessment may be laid; they are not required to wait the expiration of the two-year period but the assessment may be levied within 22 days; if a return is not made, another notice is sent before the assessment is levied (7074); in the case of Green, this has not yet been done (7075).

On cross-examination by counsel for Texas, witness admitted testifying in the probate proceedings in New York that Green on the occasion of his visit said that he had filed his Federal returns as a resident of Texas, wanted to consider himself a resident of Texas and while he felt very kindly towards Massachusetts he did spend a good deal of time there, but he was not of the opinion that the time had arrived when he wanted to establish himself as a citizen of Massachusetts and a taxpayer (7077).

On cross-examination by counsel for Massachusetts, witness testified that at the time he talked with Green he had no information except what Green told him that he did have a legal residence in Terrell, Texas (7078-9), and did not know that he did not have any residence in Terrell or that he did not have any place of abode in Texas after 1911 (7079).

On cross-examination by counsel for New York, he testified that he was a member of the Massachusetts Bar and a past President of the New England Tax Association and of the National Tax Association, and had connections with various other such associations; that he sought this interview with Green and when he went to Round Hills saw the house; that Mr. Howland, the Tax Assessor for the Town of Dartmouth, was present at the interview; that he is now too ill to testify (7081).

Witness further said that under the Massachusetts law, income taxes cannot now be levied against Green or his personal representatives for any period prior to January 1, 1935 (7083); that under the law of Massachusetts, all inhabitants of the Commonwealth are required to make a return of income from all taxable interest and dividends, re-

gardless of the amount of the income—interest from savings bank deposits or from United States Government bonds or State or Municipal bonds of Massachusetts are excepted (7083).

SETH T. COLE, recalled as a witness for Florida, testified that he was Special Assistant Attorney General in charge of this case for New York and in that capacity he conferred with Edward Harris, a witness who testified at a previous hearing, and heard Attorney General Landis ask him whether the architect had talked with him about the designing of the house at South Dartmouth and he stated that he had not; that he asked him the same question on cross-examination; that witness did have a conversation with said Harris December 16, 1937, in his room at the New Bedford Hotel, with no one else present, and made shorthand notes of the conversation; that Harris said to him that the architect said that the house was designed so that it might become a hospital (7086-7).

On cross-examination by counsel for Massachusetts, he testified that he had not made a note in his shorthand notes of the question which elicited this reply from Harris; that the answer of Harris is not consistent with the suggestion that the statement might have come from one of the workmen instead of from the architect; that all his notes show is that the architect had said that that was so (7089).

THOMAS TULLOUCH, of New Bedford, testified that he was employed by Green at Round Hills from 1932 but he had been employed around the farm, as carpenter, by his uncle, the superintendent, from 1929 (7091-2); that he took the superintendency and as such had charge of the farm, garden, the cattle, the greenhouse, etc. (7093); that there were about 150 acres of workable land, six horses, three of which died in 1934 or 1935 and were not replaced; when he spoke to Green about it, he said it was not important to have horses and he would motorize the place but he never did; he also had 30 or 40 goats and eight cows which gave milk for the house; the vegetables were used at the house; they had from 38 to 40 hands in Summer and 22 in Winter; there was no profit in it; he also had charge of cleaning the beach, clear-

ing the road and airport; there was quite a lot of waste paper and swill to be cleaned off the ground caused by the community coming down to the beach to bath; they came down there by the thousands between July and the latter part of September; they bathed from their automobiles, where they dressed and undressed (7096-7); they put tents on the beach and used Bon Ami on the windows to shield themselves; the debris came from the fruit, vegetables, etc., that they left on the road (7098); it took from eight to ten men to clean up; they had "hot dog stands" on the grounds to feed the people; all kinds of people came there and on the north end of the beach there was a Jewish Colony, called Little Jerusalem (7101).

Thereupon Fla. Exs. Nos. 41 to 45, photographs of the beach, were identified by the witness and given in evidence (7104-7108).

On cross-examination by counsel for Mrs. Wilks, the witness testified that Green permitted the people to come there in great numbers and was fond of having the common people around him; the majority came from the neighborhood of New Bedford (7109).

On cross-examination by counsel for Massachusetts, he testified that Green used to watch the bathers and stay a considerable time (7110).

William C. Vander, of New Bedford, testified that he became acquainted with Green in 1929 while working for an electric contractor on the hangar at Round Hills; that Green asked him to look at the lights and the next day asked him to take charge of the electrical work at Round Hills, which led to his employment (7113-14); in 1929 until possibly 1934, Green displayed considerable interest in the hangar and other activities and then seemed to lose interest in all of the activities on the estate; he did not come near the airport, did not go to the beach and only went to look at the atom-breaking experiments once and then only for a short period; in the fog dissipation activities he displayed considerable interest at first and afterwards seemed to lose all interest; he seemed to be quite interested in the "Charles W. Morgan" but after witness had been there for five years he suggested lighting the tablets commemorating the different names of the founders and Green told him to leave

it just the way it was; that nothing was done to repair the swimming pools during the last three years and they just crumbled away; that when witness first arrived he wrote to him about some leaks in the roof of the big house and his reply was that he was about ready to take down the old roof and substitute an old-fashioned square and tile roof and implied that he was sick and tired of it all.

Witness identified Fla. Ex. No. 46 as a letter he had received from Green regarding the plumbing, roof, etc., in the big house and the same was given in evidence (7127).

He further testified that Green's interest in the activities at Round Hills began to wane about 1934 and from then on he evidenced extremely little interest; that he seemed to lose all interest in the airport (7123).

Witness also identified Fla. Ex. No. 47, a letter from Green about the lighting of the tablet and the same was given in evidence (7125-7133).

The witness further said that he kept a record of airport landings during the night; that the first three or four years of his service they were quite frequent and after that they practically ceased; that during the Summer of 1934, two or three a week on an average landed there (7131); that in the Fall of 1929, he had a conversation with Green about remaining longer at Round Hills and Green said there were certain reasons why he would never live there all the time (7132).

Fla. Exs. Nos. 48 and 48-A, a letter and notice to Green July 8, 1930, from the Department of Public Works, concerning a public hearing regarding rules for the airport, were given in evidence (7135-6).

At the hearing at Miami, Florida, April, 1938, counsel for Florida gave in evidence the following Exhibits:

No. 50, deed dated April 24, 1924, from The Miami Ocean View Company to Green (identical with Tex. Ex. No. 402) (7899-7900); No. 51, letter to Green from The Miami Ocean View Company outlying work to be done at Star Island (7907-9); No. 52, photograph of Star Island as it was originally in 1921 (7909); No. 53, photograph of Star Island Yacht Club (7910); No. 54, photograph of the main room in the Club (7911); No. 55, letter to Green October 25, 1924, from The Miami Ocean View Company reporting progress in work (7913); No. 56, deed to Green from The Miami Ocean View Company, February 12, 1925 (same as Tex.

Ex. No. 404); No. 57, deed to Green from said Company, same date (same as Tex. Ex. No. 403); No. 58, "Restrictions on Star Island Property" (7919); No. 59, letter from Martin L. Hampton, architect, April 21, 1925, to Green, bearing Green's approval, for plans of Star Island residence (7924); No. 60, application for building permit of Star Island house (7929); No. 61, letter from John B. Orr to Green, October 13, 1925, regarding freight embargo interfering with progress of Star Island house (7933); No. 62, telegram from Green to Virginia S. Ruggles, February 9, 1926, regarding carpets for Star Island house (7936); No. 63, telegram from Green to Virginia S. Ruggles, February 18, 1926, regarding furniture for Star Island house (7937); No. 64, copy of voucher, March 11, 1926, issued to Martin L. Hampton, architect, for services (7939); No. 65, list of trees, shrubs and palms for Star Island grounds (7940-44); No. 66, letter from Green to Barth and Company, New York City, April 3, 1926, regarding alterations in house (7945); No. 67, letter from Green to Charles E. Raphael, New York City, regarding storage of valuables taken out of house during alterations, stating, "We leave the latter part of this week for Marlin, Texas, and our address will be Arlington Hotel for the next thirty days, or until about May 20th, when we hope to be starting toward the North" (7948); No. 68, application for building permit, August 21, 1926 (7950); No. 69, summary of approximate estimate for work at Star Island, aggregating $103,259 (7956); No. 70, letter from The Exotic Gardens, November 24, 1926, to Green regarding storm damage to property (7961); No. 71, label headed "Green Star Island Grove—Oranges and Cocoanuts—Miami Beach, Florida" (7964); No. 72, letter from Raphael Studios to Green, November 24, 1926, reporting progress in work (7968); No. 73, letter from Barth & Company, February 5, 1927, to Green regarding payment for furnishings (7971); Nos. 74 and 75, correspondence between Raphael Studios and Green in March, 1927, relating to furnishings (7974); No. 76, letter to Barth & Company, June 28, 1926, asking them to hold all shipments to Star Island because house was being "entirely remodeled" (7978); No. 77, letter from Barth & Company to Green, June 30, 1926, regarding stoppage of work on carpets and other furnishings because of remodeling (7981); No. 78, letter from Raphael Studios to Green, August 26, 1926,

regarding furnishings and alterations (7986); No. 79, letter to Green from Barth & Company, September 30, 1926, regarding contracts made for furniture and furnishings (7990); No. 80, letter from Barth & Company to Green, November 23, 1926, transmitting list of furnishings (7992); No. 81, application for building permit, March 27, 1928 (7994); No. 82, order from Green to Art Metal Storm Shutter & Awning Company, April 9, 1928 (7999); No. 83, order from Green to same Company, April 11, 1928 (8001); No. 84, letter from Green to Nolan, May 17, 1928, regarding removal of furniture for repairs (8004); No. 85, estimate of Reed Furniture Company to Green, May 17, 1928, for furniture repairs (8006); No. 86, building permit, June 7, 1928, for Star Island residence (8009); No. 87, letter from Art Metal Storm Shutter and Awning Company to Green, June 9, 1928 (8014); No. 88, letter from Orr & Company, July 16, 1928, to Green regarding electric fixtures (8017); No. 89, telegram, August 8, 1928, to Green from Orr & Company reporting no damage to house by storm (8019); No. 90, letter to Kiehnel & Elliott, architects, November 4, 1929, enclosing sketch of proposed changes in residence (8022); No. 91, application for building permit (8025); No. 92, letter from Green to Kiehnel & Elliott, architects, November 30, 1929, enclosing list of repairs (8029); No. 93, photograph of portion of the Green residence taken January 2, 1930, and No. 94, photograph showing boat "Colonel" and residence taken same date (8031); Nos. 95 and 96, receipted bills of Victor Company for cabinet for Star Island house (8032-4); No. 97 bill of The Miami Ocean View Company to Green for expenditures on Star Island lots (8035); No. 98, application for building permit, September 9, 1931 (8038); No. 99, letter from Kiehnel & Elliott, architects, December 12, 1932, to Green regarding insurance loss on furnishings (8043); No. 100, application for building permit for remodeling house, August 4, 1933 (8045); No. 101, letter to Green, August 14, 1933, from Lowry Wall enclosing list of damage to Star Island home by fire June 26th, together with adjustments, etc. (8050).

JOHN MCKIE, of Miami, testified that he was Vice President of John B. Orr, Inc.; that their first contract with Green for work at Star Island in 1925 was $88,000, increased

by extras to $114,000 (8053-56); they remodeled the old Yacht Club into a residence; the outside walls of the big room, now the living room, were all that was left; later they were employed to remodel the big room, putting in an ornamental ceiling and staircase, at a cost of about $92,000 or $93,000; the ceiling was superfine and the work as costly as could be obtained; Kiehnel & Elliott, of Miami, were the architects and in 1928 witness' Company put up an expensive addition to the Star Island house, costing $70,000, which included some additional alterations in the main house and the building of men's servant quarters on the west side, called the "Bull Pen;" this was all of piling and concrete frame, block walling, stucco and ornamental stone—first-class construction; the tile work was the most elaborate of any residence in the neighborhood; the Greens were occupying the house when their last work was done in 1928 (8056-60).

On cross-examination by counsel for New York, witness testified that the ornamental work such as the ceiling and staircase was of a very costly nature and the house was somewhat unusual (8061). On cross-examination by counsel for Massachusetts, he testified their first work lasted from June, 1925 into 1926 and was completed in Green's absence; during the Winter Green came down but witness never saw him; the work on the second contract started in August, 1926, and was carried into 1927; Green was not present and took no active interest in the work of construction under their contracts (8062-4); the last work started around March or April, 1928, and was done principally during the Summer season; witness dealt directly with the architect and does not remember whether Green was there; witness was at the job most of the time and did not meet either Colonel Green or his wife (8065).

CHARLOTTE E. FRENCH, recalled by Florida, identified Fla. Ex. No. 49, photostat of a plat of Star Island, which was given in evidence (8071), and testified that having refreshed her memory she found that Green first bought Lot 22, a vacant lot, in 1924; in 1925, he bought Lot 46, with the club house and the same year bought Lot 21 adjoining (8071); that The Miami Ocean View Company developed Star Island, building it up from the bottom of the Bay (8072).

Witness identified from plats other homes on Star Island and further testified that people owning them claimed Star Island as their legal residence and voted there (8081-2).

Frank N. Deigaard, of Coral Gables, Florida, testified that he was a building contractor and that his firm did some alteration work for Green at Star Island in the Spring of 1931; they replaced the tile and gravel roof and in the Fall of 1931, built a new addition—the east wing—at a cost of $85,000; it was a concrete building of tile and stone; everything was the best available and a large portion of the first floor and staircase was marble, carved by hand—very expensive work; the sash were solid bronze imported from England and alone cost about $25,000 (8085-8); the roof was of Cuban tile—the highest priced tile—the best type of roof construction known to the trade; all of the stone columns were cast stone, hand carved and styled (8089); they also made some repairs in the old portion of the house damaged by fire and rebuilt the elevator and installed a heating plant in the new portion (8091); the new part was where the Greens lived; it was constructed as a comfortable home, regardless of expense (8092).

On cross-examination by counsel for Massachusetts, witness testified that the house had more electrical outlets than was usual at that time but it has since become more usual; there were a dozen or fifteen outlets in each bedroom (8095); Green came there while the work was going on; he would come over casually in the morning before going out to drive, staying a very short time (8096); that if the plans show that some of the bedrooms contained 25 outlets, that would be an extraordinarily large number (8099).

On redirect examination by counsel for Florida, he said none of the outlets were concealed and further testified that the building was a Spanish type of architecture (8100).

William P. Baird, of Miami, Florida, testified that he was employed by Green in 1932 to take charge of the maintenance of the Star Island property; everything connected with the upkeep of the place came under his jurisdiction as superintendent; he remained until Green's death; his instructions were to keep up everything in a permanent way,

Summer and Winter; the grounds were kept in perfect shape; there was nothing around Miami Beach or Miami any better; Green said the desk he used at Star Island was his mother's desk and he prized it very highly; witness raised it so his chair could be gotten under it (8102-5).

Richard Plummer, of Miami, Florida, testified that he was an interior decorator; did work on the furniture and furnishings in the house between 1928 and 1936; the house was beautifully and expensively furnished, and comfortable; there was nothing lacking to make it a home; everything that was in the house was very fine; most of the furniture and furnishings were individually designed for the rooms (8110-15).

Mrs. Charlotte Donn, of Miami Beach, Florida, testified that she was employed by Green as caretaker at Star Island during the Summer and that her husband was superintendent of the grounds; that she had been there since 1927, with the exception of two Summers (8122-4); she identified Fla. Ex. No. 102 as a photograph of the front of the main entrance of the old part of the building, showing two Gs above the center of the main entrance (8124); and on the door shown in the photograph as the main entrance to the house is another GG under the coat of arms. Said photographs were given in evidence as Fla. Exs. Nos. 102 and 103 (8127).

She further testified that Fla. Ex. No. 104 is a photograph of a similar GG in the front of the entrance leading to the water (8129). She also identified Fla. Exs. Nos. 105 and 106 as other photographs of the Star Island house and testified that after Green's death two chairs, a coffee table and a round center table were taken out of the main living room—all very fine pieces—and put in storage by Mrs. Green; also the furniture from her bedroom and dressing room and the draperies from the dressing room (8133-5); that the dock and posts were supposed to be Venetian (8136); that Green planted about 1600 rose bushes each year; during the time she was there everything was kept in the very best condition; that the desk in Green's room, which he used, was understood to have been his mother's (8140).

On cross-examination by counsel for New York, witness testified they had about 28 servants to come down with them or a few days before and left when they left; the house was practically closed but not locked up until the Greens returned the following year (8140-1); one of witness' duties was to open the doors and windows every day and keep the house well ventilated; during the hurricane season, between July 17th and October, it was boarded up; there are 51 rooms in the house (8141-2).

On cross-examination by counsel for Massachusetts, she testified that she counted the outlets and found 50 in the palm room, of which were there 28 double plugs; 25 in Mrs. Green's bedroom, 25 in the dressing room, and in Green's room considerably more (8147-8).

In response to question by counsel for Florida, witness said these outlets were for use and not hidden (8151).

On being recalled, the witness further testified there were three doors to the elevator shaft, with a G on each panel, four inches high (8167), and identified Fla. Ex. No. 107 as a Christmas card received from Green, on the reverse side of which was a picture of 46 Star Island (8171-2).

On cross-examination by counsel for New York, witness testified that most of the furniture in the big room came off the yacht "United States" (8173), and identified Mass. Ex. No. 462 as a memorandum of the outlets in the house (8176).

On cross-examination by counsel for Mrs. Wilks, the witness testified that she had lived in Florida for fifteen years and had actually lived in the Star Island house all through the Summer months for a great many years; that it was a very livable place during the Summer months but that Green only remained there during the Winter season (8184).

On redirect examination by counsel for Florida, she testified that the bedrooms of Colonel and Mrs. Green and the sun parlor were air-conditioned and there was an electric fan in every room (8186).

James Donn, of Miami, Florida, testified that he had been a resident of Miami for about 23 years; that Star Island was pumped in from the Bay and he had been familiar with it from the beginning; that he was engaged in the

nursery and landscape business and was President of The Exotic Gardens, Inc.; that he met Green in 1924 at Star Island, through John Levi, its developer; Green made an agreement with him to landscape the property—the lot with the Yacht Club building on it and the adjoining lot; afterwards made a contract with him for the other lots he acquired; that as he acquired the additional lots and made the additions to his home, they were given the work of landscaping the property; the first contract was for $3,000, and after that there was no limit as to cost, and the landscaping and maintenance were handled together; after the first contract, it was a question of maintaining the property and doing the necessary extra planting on a monthly basis; Green spent about $12,000 annually on his shrubs, trees and maintenance; every Fall the gardens were spaded up and about 10,000 annuals were planted; he was extremely fond of roses and they planted 1500 rose bushes every year; whenever he heard of a storm, his order was to restore the palms and other trees and plants to their original state; the palms on the property today were the large ones supplied by his Company—the center avenue of Royals and coconuts are all large trees; in the early days when they were put in the Royal palms were much more expensive than they are today, being worth approximately $250 apiece, the coconuts about $75 apiece (8190-98); they planted the Bougenvillia vines with the usual annuals; the roses were in addition; the annuals were planted in what was called the formal garden, extending from the main entrance to the main driveway; Green was much interested in the public and derived much pleasure in seeing people driving around the Island stopping to view his formal garden, which was in full view of his original bedroom in the old part of the house; he was always definite in his instructions that that part of his property must always be a show place; it was a parterre design; Green was always deeply interested in the flowers and palms and his instructions were that he wanted his place a show place of Miami and on no account should they fail to have the flowers in bloom when he arrived; the only censure witness ever received from Green was on one occasion when the annuals were late because of a hurricane (8199-8200); the grounds, shrubs, etc., excelled anything on Star Island, Miami or Miami Beach, except the James Deering Estate; Green's property was better maintained

and had a higher type of landscaping than any (8202); in the early years 1928, 1929 and 1930, witness would see Green 40 or 50 times during the season but in 1935 and 1936, when his health became so poor, he didn't see him often (8202); that "he was what is called a Winter resident;" he had his own home and sometimes stayed here later, once staying until June; he has heard him say he was glad to get back to Miami and knew he could enjoy the next few months "without his feet getting cold"—rather a humorous remark with him (8203); he went out daily in his automobile, when well, both morning and afternoon; he enjoyed talking with the shop men and policemen and people generally (8204-5); his attitude towards the people was very friendly and they, especially the policemen, regarded him as a benefactor; the City of Miami gave him a silver star—an official Municipal star—which gave him special privileges; Green said Miami seemed to agree with him better because of its mild climate—he could depend on going out daily without worrying about the weather—could use his automobile all the time (8206); he had a special automobile with a movable glass top; Green did not entertain much but Mrs. Green did and witness supplied the flowers; he had them construct a little concealed niche in the balcony where he could see but not be seen at a party given at his home by Mrs. Green (8207-8); witness has heard him say in a conversation how much he enjoyed Miami and being able to drive out in January, February and March and see roses picked for the table (8210); Green was always very generous, especially to boys, and witness received an annual check of $1,000 as his contribution to the Community Chest and a contribution of $3,000 or more to the Boys Band (8211); Green was always interested in joining with others in any type of beautification that would benefit the community (8211); he said it was a source of real pleasure to look out and see flowers blooming in his formal garden; he instructed witness to plant a great many large bearing coconut palms because he wanted to ship the coconuts to friends in the North and he had labels printed with coconuts on them showing they came from Florida (witness identified Fla. Ex. No. 71 as one of the labels); he said several times he would like to have stayed longer but the help and Mrs. Green were always anxious to get away and were always worrying him about the mosquitoes; that by going North

too early sometimes they ran into rather boisterous weather and if he had his way he would stay late into June all the time (8212-14).

On cross-examination by counsel for Massachusetts, witness testified that Green always enjoyed meeting the common everyday people and it gave him pleasure to have them appreciate what he was doing and to see them enjoying his place; that he referred to Round Hills many times and said that lots of visitors visited Round Hills and enjoyed the grounds and the beach (8219-21).

On redirect examination by counsel for Florida, witness testified that a few people would come into the estate but most respected the "Private" sign at the entrance and viewed the formal garden from the driveway; that 46 Star Island faced the Flagler Monument, across the main waterway (8231), and in response to question by counsel for Massachusetts, further testified that the place contained three acres altogether (8232).

Counsel for Florida gave in evidence Fla. Ex. No. 108, a list of the movements of Green's private car, from the records of the Florida East Coast Railway Company (8234), and No. 109, a letter from Green to the Assistant General Passenger Agent of the Atlantic Coast Line Railroad Company, December 10, 1929, requesting a five room private car (8238); also Fla Ex. No. 110, a telegram from Green, May 5, 1933, to the Lake Placid Club inquiring for reservations, in which he said, "Stella is after me to get away on account of mosquitoes and flies, but otherwise weather here is fine" (8240).

Marguerite H. Allen, of Miami Beach, testified that she was a caterer and served two big parties and several smaller affairs each year for Green at 46 Star Island (8243); on the night of March 16th or 17th, 1930, they gave one of the biggest parties ever given in a Miami home; witness furnished everything, including several hundred dollars worth of flowers; her bill was approximately $2200; the grounds were electrically illuminated and the old houseboat used as a dance pavilion; Green was able to see it from the balcony above (8245-7); this party was attended largely by the people of Miami and Miami Beach; flood lights were turned on in the garden; Green was very much pleased with

it (8249); on another occasion, Mrs. Green had a large Easter party for 75 or 100 of her more intimate friends and they gave a large Easter party for children (8251); that Green did not want any liquor served if there was any way to do without it; he said the house would have to be sacred (8253).

E. G. Sewell, of Miami, Florida, testified that he had lived there 45 years and was formerly President of the Chamber of Commerce, Mayor and Commissioner and has seen the development of Miami and Miami Beach during that time; he met Green as a guest on his boat in the marine pageant in the Spring of 1928 in which the boat was entered (8257-8); from then on visited the Green house in the evening on occasions; the Greens had an elaborate party of 200 or more which witness and his wife attended; that at the Shriners Convention in May, 1928, when he was Mayor, there was a marine pageant in which Green entered two boats (8259-61); on another occasion there was a Venetian fancy dress ball at the Nautilus Hotel, which was attended by Mrs. Green and a party of 25 guests (8263); Green was interested in the City's welfare, in the general progress of the City and local improvements, contributed to the Boy Scouts, Boys' Band, Bugle Corps and an operating room at the Jackson Memorial Hospital (8264-6); he was interested in boats and kept two or three yachts, including the "show boat", manned and ready for use (8267); he showed every interest a "Winter Miamian" could show in the welfare of the Community; the City gave him an official star because of his public spirit; he always expressed himself as being glad to get back to the wonderful climate (8268-70).

On cross-examination by counsel for Texas, witness said Green talked about Texas a good deal and on one occasion when witness asked him about having the name of "Galveston" on one of his boats Green said, "I lived in Texas so long I consider this a home port" (8278); he told him about living in Texas a number of years and the things he did there, but while living at Miami Beach he never told him he considered his home in Texas (8283).

On cross-examination by counsel for Massachusetts, witness said that in conversations with Green he discussed Round Hills, especially in the Spring when they were getting ready to go North, and mentioned the experimental work

and activities up there (8296-7); the subject of his becoming a resident of Florida was never broached by either of them (8299).

Eugene Franklin Holland, of Miami, Florida, testified that he was an electrician; that on one occasion, probably in the Spring of 1930, he supervised the temporary lighting of the grounds of 46 Star Island for a party given by the Greens; several thousand lights were strung around the trees, driveways, etc.; about seven and a half thousand lights were distributed around the grounds, about the "show boat" and the "Mabel G." (8312-13); he also had charge of the electrical work on the new east wing of the house, which was as good as could be obtained, and there were plently of outlets, but no concealed outlets (8315); on one occasion while doing some work near his bedroom, Green told witness, when he asked him how he liked Florida, that he liked the weather which permitted him to go out more than any other place (8317); that after a slight electrical fire in the dining room in 1934 or 1935, Mrs. Green ordered the room repaired in a permanent way and said "she did not want her home burned down" (8316).

Fla. Ex. No. 111, receipted bill of The Brown Electric Company, March 23, 1930, for electrical decorations for the party at Star Island March 15th, 8936 outlets at 20¢ and various flood lights, etc., aggregating $6,869.47, was given in evidence (8326).

Robert A. Gideon, of Miami, Florida, testified that he was a furniture salesman and first met Green in 1927 or 1928 as a member of the Publicity Department of the City of Miami in connection with the night pageant for yachts (8330-1); that Green entered one of his boats and wanted to make it the finest boat in the pageant; it was the gaudiest thing that ever sailed the water, it had more colors and lights on it than witness had ever seen before and some of the finest looking and best dressed women that night were aboard the boat; this was one of the outstanding local events (8331-2); witness developed the Bay Vista Park and approached Green for aid, who said, "Certainly I will do something—you know this is my home, too—you have been visiting me long enough over there to know it is my home as well as

yours—if you people will get that park built, I will build you a swimming pool;" later, when the City took it over and charged admission, Green lost interest and said it is no longer a people's proposition, the City owns it (8335).

Miss Jefferson Bell, of Miami, Florida, testified she was on the staff of the Miami Herald Newspaper as society editor and knew Colonel and Mrs. Green and attended social gatherings in their Star Island home; she attended an evening party given by Mrs. Green for 200 or 300 guests, at which there was dancing on the boat (8341); Mrs. Green also gave a luncheon at the Surf Club, one of the exclusive clubs; she gave large parties once or twice a season (8342); Green did not go out a great deal but Mrs. Green was very active in the social life and Colonel Green in the community life but witness never saw him at parties (8345-6); Mrs. Green was popular in receiving and serving at parties of others (8352).

George Rodearmel, of Miami, Florida, testified he was a ship master and was employed by Green in the Spring of 1935 as Captain of the "Mabel G." and the "Isola Stella;" the first was a 62-foot express cruiser used for short runs and the latter was a sort of a gondola used for decorative purposes at home (8355); both boats stayed in front of the house and when the Colonel left on his vacation, were laid up at the Fogal Boat Yard; about ten days or two weeks before the Colonel arrived, witness was instructed to have the boats in front of the house and ready for use (8356); they were all manned and ready for service; the "Mabel G." had "Galveston" on her stern and hailed from New York, built in 1925 (8357); the "Isola Stella" had "Star Island, Miami Beach, Florida;" she was built in the Miami River (8358); no expense was spared in keeping them in condition at all times; they were kept like a baby grand piano; Green did not go out on the boats or use them personally in witness' two and one-half years of service but Mrs. Green would go out with guests (8359); Green also had the "Friday" in the storage shed; she was registered from Miami, Florida (8360).

Fla. Ex. No. 112, certificate dated February 29, 1936, undocumented vessel, issued to the "Isola Stella" was given

in evidence, showing Green as owner, "whose present address is 46 Star Island, Miami Beach, Florida," and that it was built in Miami Beach, Fogal Boat Works, in 1928 (8369-70); also No. 113, a photostat copy of certificate of award of number issued to Green, address, 46 Star Island, Miami Beach, Florida, for unnamed vessel (8373).

LINCOLN BROWN, JR., of Miami Beach, Florida, testified that he was an electrical inspector for Miami and formerly an electrical contractor; that he did much maintenance work for Green at his Star Island residence and the installation for a large party there; that he had not seen anything in this area before or since to compare with it; they had about 18,000 lamps, which was rather unusual, a majority of parties run anywhere from 2,000 to 3,000 lamps; not only decorated the trees and shrubs but also the driveway and main entrance, flood-lighted the Royal palms and the annual gardens between the palms with garland lights to blend with the flowers themselves, which made a very pretty show, and also lighted the area around the dock and the front side of the house facing the Bay; Green issued the orders for that job, watched the work and took much interest in it (8378-80); witness first interviewed Mrs. Green and after receiving her instructions, Green said, "I do not believe that is enough; I want to make a show that will be outstanding here; you can really go ahead and do your best; we have had pretty jobs around the beach and I have heard a lot of talk about them and I want them to talk about this one; this will be an outstanding party" (8380); there was no limit placed on the expense of the decoration for the party; witness also did the wiring for the east wing of the house and has recently inspected the plans showing the locations; the outlets could be termed right up to the minute at the present day; it has become customary to place outlets between every opening to prepare for a change of furniture in large rooms; at the time it was done, it was the best method of installation known (8381-3); base receptacles or convenience outlets are liberally supplied throughout the house (8383); they were all made available for use when needed; in doing the work the Colonel was anxious to have everything done in the best manner possible without regard to price (8385); had about 70 men employed for a week on the party job;

there was a second illumination the day of the visit from the President of Cuba (8385); this party job cost about $6800; that on returning from a trip, he had a conversation with Green in which the latter spoke of the lack of appreciation of the people of the advantages of living in Miami and referred to them as crackers and when witness objected, Green said, "You don't want to feel bad about being called a cracker, we crackers have to stick together" (8388); his favorite expression was to refer to it as "God's Country;" the only thing that bothered him were the mosquitoes in the late Spring and early Summer; he never mentioned Texas and said he would stop off in New York on business on his way to Round Hills, Massachusetts; told him he had been doing some electrical experimenting up there (8389).

On cross-examination by counsel for New York, witness stated there are plenty of outlets in the palm room, two in the ceiling and the rest located on the side; they are either the wall bracket type or in a base location within eighteen inches of the floor (8391).

Edgar Louis Keuling, of Miami, Florida, testified that he was a florist and met Green when he bought the Yacht Club and in connection with the motor boat races in which he was interested; witness was Commodore of the Club at one time; these races were on a national and later international scale; boatmen would come from Italy, France and other Countries; they were held in front of the Flamingo Hotel in the Bay, between Star Island and Miami Beach Island, were fostered by the Miami Beach Yacht Club composed of local people; in the early days, Green contributed to the financial support of the general program and later in putting out a trophy for outboard motors, a very fine trophy called the Star Island Trophy—they called it the Colonel Green Trophy; the development of outboard motors was due to the magnificent trophy he gave (8394-5); the large trophy was kept by the winner for one year, his name inscribed upon it and when it was returned, he kept a replica of it.

Witness identified Fla. Ex. No. 114 as a photograph of the trophy and the same was given in evidence (8396-7).

He further testified that Green was very much interested in the races and in the larger boats which came from Europe

to compete in the international races; primarily he was interested in the outboards and wanted to see them develop; witness also furnished flowers for his house on several occasions; Green joined nearly everything of a civic nature and subscribed to various organizations; they always counted on him to be at the top of the list to promote something of a civic nature; Green called Star Island "home" (8400-1); on one occasion when he took some flowers over to him when he was leaving, Green said, "This will be a short vacation; this is God's Country; I want to get back here quick;" which was a sort of slogan of his (8402-3).

JOSEPH A. RICHTER, of Miami, Florida, testified that he was in the jewelry and loan business, handling diamonds, etc., for individuals and jewelers who had gone out of business—distress goods; that he was in business for five years in Washington, D. C., at 7th and G Streets (8411); met Green at his Star Island home in 1928 and sold him several pieces of jewelry for about $40,000; later, in May or June of that year, tried to see him at the Waldorf in New York City but he was not feeling well; that Fall, witness went to New Bedford and Green showed him about the airport, his roads, etc., and told him how he established there—that his father and grandfather came there on whalers and how they made their money and bought land for a song; he said he kept the place merely in remembrance of his ancestors; witness asked him how the climate compared with Miami and he said, "Right now it is kind of cool and chilly (he had his overcoat on); Miami is the land of sunshine; there is no comparison, February and March in Miami I can go out and feel like God's Country and down here I have to shiver like an old man, feel cold and don't feel right" (8414-15); witness asked him if he didn't like New York in comparison and he said, "No, I don't like it because its big buildings throw the heat and I don't feel right in New York;" he drove witness around and showed him some of the factories he was interested in—a knitting factory; witness showed him some pieces of jewelry and he said something about having lost some money in stocks and did not believe he was interested then "but will see you when I get home to Miami next Fall" (8414-16); witness asked him when he expected to be there and he said some time before Christmas; witness called on

him before Christmas and he was having some work done and said, "How can I spend more money when I am having all this work done around here: I have to make improvements, and do not believe I want to spend any more money"; the next day his chauffeur stopped in front of witness' store and witness got in the car with Green and sold him about $100,000 worth of jewelry and the following week some more merchandise (8416); that was in 1929 and in the latter part of that year he met him on the Venetian Causeway one Sunday afternoon and Green said he was just viewing his home over there and remarked how beautiful the waters were and pointed out the show boat and said, "Is not this beautiful"; he said, "I have some valuable oil paintings, and I do not know of any artist that could paint this picturesque place of my home here" (8418); witness said he did not sell Green anything after 1929 (8424).

Fla. Ex. No. 115, a letter from Green, dated Lake Placid Club, November 30, 1932, to W. K. Potter, asking for the amount and date of any checks around March 11, 1929, issued to the Richter Jewelry Company while in Florida, and Potter's reply to Green, December 1, 1932, Fla. Ex. No. 116, stating that on March 11, 1929, there was a check for $340,000; March 1, 1929, $22,000; February 28, 1929, $27,500; March 1, 1929, $30,000—were given in evidence (8420-21).

Elisha A. King, of Miami Beach, Florida, testified that he was pastor of the Community Church in Miami Beach, a Church open to everybody in the world regardless of denomination, maintained by voluntary subscriptions; knew Green but had no personal relations with him; in 1925, Green subscribed $1,000 with others to pay the debt on the Church; on this occasion, he was living on his house boat before he built his home at Star Island; from 1930 to 1935, inclusive, they received contributions of $250 a year from him (8430-33).

On cross-examination by counsel for New York, he said he did not know what Green's religious affiliation was and never discussed it with him; he never attended his Church.

On cross-examination by counsel for Massachusetts, he testified that in trying to raise a fund of $100,000 they wanted Green as one of their first subscribers and he had several conferences with him before obtaining his subscrip-

tion; he had always been interested in children and young people and witness showed him photographs of groups of the children about the Church which interested him.

Fleming G. Railey, of Miami, Florida, testified that he was a hardware merchant, had been County Commissioner for two years and active in civic and political matters (8438); that he became acquainted with Green in 1928; Green would drive by his store and they would bring out various articles to him, particularly jigsaw puzzles, in which he was much interested, and the machinery for making them; he had a shop of some kind and wanted every new item that came out; he called often and would park his car sometimes for an hour while looking over their merchandise; his purchases were not confined to wood-working machinery; witness learned to know him fairly well in a business way; would see him in the Fall when he returned from his Summer vacation and asked him if he enjoyed the Summer and was glad to get back and Green always said, "I always feel good here and am glad to get back home"; that from witness' knowledge of the records of the Chamber of Commerce, Y. M. C. A. and Community Chest, of which he was a member of the Executive Committee for a number of years, he knew that Green gave to various institutions and organizations. On cross-examination by counsel for Texas, he testified that there are many people at Miami who stay from January to May and go away on an eight months' vacation, including many who register and qualify to vote; witness does not know that Green did register or vote there; 90% of the people who go away say they are glad to get back to God's Country but he cannot recall hearing Green say so (8445).

On cross-examination by counsel for Massachusetts, witness stated that he never heard a native of New England refer to that as God's Country after he had spent any time in Miami; he cannot recall that he ever heard Green say that he was going away on a Summer vacation (8446).

John Klein, of Miami, Florida, testified that he was Deputy Collector of Customs at Miami, having custody of the registration of boats, and produced his record for the

boat "Friday," signed and sworn to March 2, 1932, by E. H. R. Green, "of Miami Beach, County of Dade, State of Florida," as sole owner (8451-2).

HENRY E. MANGELS, of Miami Beach, Florida, testified that he was a retail grocer and wine merchant and did business with Green; that as an official of the Community Chest, he called upon Green at his Star Island home in 1927 and obtained a contribution of $1,000; in the course of their conversation, Green said, "I lived in Texas; was sent there by my mother, who owned a railroad there, to see if I could get some additional business; I would go into a town, be waited upon by the citizens and officials to see what they wanted; invariably they wanted a new depot or something of that sort and I would ask them what have you got in the City that will warrant a new depot and they would say, we have fine schools, fine churches, fine people and good citizenship; I would ask them what else have you—have you any gambling houses, any saloons, any sporting houses, and they said, No; I would tell them I will have to think this over, it takes all kinds of people to make a good town;" that they had quite a chat over what Miami would be if we had good gambling houses down here; Green said, "I used to live in Texas; it used to be my home;" that they did not discuss New York or Massachusetts (8457-8).

Thereupon counsel for Florida gave in evidence the following Exhibits:

Fla. Ex. No. 117, photograph showing the insignia on the keystone arch above the main entrance to 46 Star Island, or monogram "GG"; No. 118, a photograph of a portion of the room in which is the framed picture of international prizes awarded Green as a stamp collector; No. 119, photograph of Green's bedroom showing a number of trophies awarded him; No. 120, photograph of the entrance to the elevator showing the monogram "G" on each door; No. 121, a list of the cost of furnishings supplied by Barth & Son; No. 122, bill of lading of the Clyde Steamship Company regarding shipment of furniture from Boston, March 2, 1927, from the Shaw Furniture Company to Green, Star Island; No. 123, partial list of shipment of furniture by Raphael Studios in February, 1927 (8460-77).

S. Grover Morrow, of Miami Shores, Florida, testified that he was an attorney at law and Municipal Judge of Miami Beach from January 1, 1925 to December, 1928, and a member of the Board of School Trustees of the District comprising Miami Beach from 1929 to 1937, being Chairman of the Board for the last two years; that he was a member of the Miami Beach Chamber of Commerce for ten or twelve years and first came in contact with Green in 1928 or 1929 in connection either with Scout work or the Committee of One Hundred; that Green contributed approximately $1,000 a year for several years to the Chamber of Commerce; they always counted on him in making up their budget to the extent of that amount; Green was a charter member of the Miami Beach Rod and Reel Club, which started as a rather exclusive organization limited to residents of Miami Beach, afterwards extended to include Greater Miami and visitors (8481-2); that Green continued his interest in the Boy Scouts organization for several years and made contributions; the Committee of One Hundred was started as a political organization for good Government; Green was a member and contributed $500 on one occasion towards the election of Snedigar and witness attended meetings at the Star Island house, which was a large palatial residence (8483-9).

Lewis Forrester, of Miami, Florida, testified that he was an automobile salesman, formerly connected with the Lincoln dealer in Winter and with the Motor Sales Company in New Bedford in the Summer; that he sold Green seven or eight cars—a Lincoln for Mrs. Green in 1931, which was sold and delivered at Miami Beach, in 1932, a Lincoln car with a custom built body with a special door, for his own use, which was sold at Miami Beach and later delivered at New Bedford, Massachusetts, because he was getting ready to leave Miami; also a number of Fords; sold him another Lincoln for himself in the Fall of 1935 at New Bedford; that during that Fall Green was sickly and witness drove him to the station and he inquired whether witness was coming back to Miami or was going to stay up there and freeze to death, and further said, "I will be glad to get back to my home in Florida; I am going to leave here and am glad to get away" (8490-96); Mrs. Green always had the latest model Lincoln and Green had two or three

cars, usually keeping one or two at Miami Beach; he also had Ford trucks, tractors, etc., which were old; he spent a lot of money keeping them up; witness tried repeatedly to get him to trade them in but he didn't seem to be interested in buying any new equipment for Round Hills (8497).

On cross-examination by counsel for Massachusetts, he testified that the last two Lincolns sold Green were sold in New Bedford (8498); of the five cars sold Green, the only one purchased at Miami Beach and delivered there was in December, 1930 (8500); that the cars had Massachusetts licenses but sometimes Florida (8504).

Counsel for Florida thereupon gave in evidence the following Exhibits:

Fla. Ex. No. 124, letter from Green, February 6, 1925, to H. A. Josselyn, Manager, Credit Department, The Bank of Bay of Biscayne, stating he would like to become a permanent member of the Miami Biltmore Golf Club at Coral Gables; No. 125, a photograph of the "Colonel," as first purchased, and No. 126, after it was converted into a show boat; No. 127, photograph of the show boat as tied up at Green's wharf; No. 128, a certificate of the Deputy Commissioner, United States Employees' Compensation Commission, January 12, 1931, covering the "Mabel G.", in which it appears that Green, of Star Island, Miami Beach, Florida, is the owner and operator; No. 129, a similar certificate for the "Isola Stella"; No. 130, a similar certificate for the "Colonel"; No. 131, letter from Green to the Secretary of the Miami Beach Yacht Club, April 4, 1931, stating that he has ordered six more of the silver miniature outboard motor trophies, and No. 132, bill of Caldwell & Company, Philadelphia, for making the same; No. 133, certificate of payment of tax on the "Isola Stella" for the year ending June 30, 1933, and No. 134, receipt for said payment; No. 135, letter from M. Fogal to Green, Round Hills, November 13, 1934, regarding the boat "Friday" and repairs needed to the dock at Star Island, stating he would have the "Mabel G." and "Isola Stella" at the dock January 1st, as in previous years, and No. 136, letter from Green's secretary to Fogal, November 22, 1934, authorizing the repairs and stating they would be leaving shortly for Miami (8507-8528).

AGNES MOLLIE PURNELL, of Miami Beach, Florida, testified she was associate secretary and treasurer of the Miami Beach Chamber of Commerce and previously stenographer, secretary and bookkeeper in charge of the correspondence and records; she identified and counsel gave in evidence Fla. Ex. No. 137, a letter to Green from the Miami Beach Chamber of Commerce, signed by the Board of Governors, October 11, 1926, regarding the hurricane and damage therefrom and soliciting his aid to the extent of twenty memberships at $25.00 each (8539); No. 138, Green's reply, October 18, 1926, enclosing a check for $1,000 (8542); also Fla. Ex. No. 139, a letter from the Secretary of the Chamber of Commerce, October 21, 1926, to Green thanking him for his contribution, and Fla. Ex. No. 140, a letter from the President of the Chamber of Commerce to Green, October 22, 1926, stating they would like to give his contribution some publicity (8544-47).

The witness further testified that the records of the Chamber of Commerce showed Green was a regular member and in 1927 made a contribution of $975, in addition to his membership fee, and from 1928 on up to his death he was a member and made a contribution of $1,000 a year (8549).

Counsel also gave in evidence his membership card as Fla. Ex. No. 141; No. 142, notification from the Chamber of Commerce to Green that he was entitled to six votes at the annual election January 20, 1927 (containing the notation that no vote was cast because he did not reach Miami until the afternoon of January 20, 1927); No. 143, letter from the Chamber of Commerce, September 9, 1927, to Green regarding an illustrated booklet and asking a contribution; No. 144, Green's response enclosing a check for $300; No. 145, a form letter from the Chamber of Commerce, January 19, 1928, regarding Miami Beach; No. 146, Green's response, January 27, 1928, enclosing check for $1,000; No. 147, letter from Green, February 11, 1928, to the Secretary of the Chamber of Commerce acknowledging receipt of a "City Key" which he said he would have installed on his automobile; No. 148, a letter to Green, January 28, 1935, from the witness as associate secretary of the Chamber of Commerce thanking him for his generous assistance; No. 149, ledger sheet showing Green's payments to the Chamber of Commerce from 1927 to 1928; No. 150, Green's card from the Chamber of Commerce showing payments made annually from 1929 to 1936; No. 151, photograph of

The Bath Club of Miami Beach; No. 152, another photograph of the same Club; No. 153, letter from Green's secretary to W. K. Potter, April 13, 1927, stating, "Colonel Green has joined a very exclusive club on Miami Beach called The Bath Club, which is just being organized and cost $1500 to get in;" No. 154, a letter from Green to the Assistant Secretary of said Bath Club, May 21, 1927, stating he would subscribe for two seasons for a cabana, near the driveway, so that his automobile could get in; No. 155, reply from The Bath Club, May 26, 1927, reporting the reservation of the cabana; No. 156, a letter from Green to The Bath Club accepting the reservation and No. 157, certificate of founder membership in said Bath Club issued to Green (8550-8589). The witness further testified that she came to Miami Beach in November, 1928, when its estimated resident population was around 10,000 and in 1935 it was 13,300 and is now approximately 18,000; that their records show that during the twelve months of 1937 approximately 60% of the hotels remained open and approximately 75% of the apartment houses and 60% of the stores and shops stayed open all the year (8595-7).

Joseph T. Rambler, of Coral Gables, Florida, testified that he was President of the Fogal Dry Dock and Storage Company and connected with the Fogal Boatyard, Inc. of Miami; that Green was interested in and a Director of the Fogal Dry Dock and Storage Company and came around the plant quite often; the Fogal Boatyard built the "Friday" and the "Isola Stella" for him about 1926; the "Isola Stella" was patterned after a Venetian gondola, was constructed so as to go under the bridges in the Indian River and other waters at Miami Beach (8600-3); from his home on Star Island, Green could use this boat and pass under all the bridges there; on her stern was painted "Miami Beach"; the "Friday" was strictly a tugboat to be used in connection with a larger boat in intracoastal navigation to Jacksonville but he never used her for that; she was stored almost continuously from the time she was built and was registered in Miami, her home port (8604); his house boat the "Colonel" was converted into a Mississippi River show boat, which was kept at Star Island in front of his home for a few months in the Winter and up the Miami River dur-

ing the Summer; he also had a cruiser about 60 feet long called the "Mabel G." which he kept at Star Island in the Winter and stored the remainder of the year; the boats were usually taken out in the month of November and returned to storage anywhere from April to June (8604-7).

Counsel for Florida gave in evidence the following Exhibits:

No. 158, letter from Green to the Windham Realization Company, April 13, 1927, stating that he was joining Mr. Fogal's enterprise and had agreed to advance $100,000, at 8% interest and all taxes to be paid,—the profits to be divided between him and Morton Fogal on a 50% basis (8609); No. 159, letter from Morton Fogal to Green, Marlin, Texas, May 6, 1927, reporting progress on the new plant (8612); No. 160, a statement of investments of Green in the Fogal enterprise dated March 5, 1928, total $62,105.45 (8615); No. 161, letter from W. K. Potter to Green, March 22, 1928, inquiring whether any change had been made in this agreement with Fogal (8618); No. 162, Green's reply to Potter March 26, 1928, asking him to await further information, and No. 163, partnership agreement between Green and Morton Fogal, both of Dade County, Florida, April 14, 1927, for the conduct of the business under the name of The Fogal Dry Dock and Storage Company (8625); No. 164, certificate of incorporation of The Fogal Dry Dock and Storage Company, April 2, 1928, signed by Morton Fogal, Colonel Green and Anna W. Fogal, showing Fogal with 499 shares, Green with 500 shares and Mrs. Fogal one share (8635); No. 165, letter from Green's secretary Marshall to the Windham Realization Company, April 19, 1928, stating Green had purchased some additional property in connection with the Fogal Dry Dock and Storage Company and issued his check for $15,000 (8643); Nos. 166 and 167, letter from Potter to Green at Star Island, January 17, 1936, and Green's reply, January 20, 1936, regarding the Fogal mortgage for $16,000 which he authorized to be extended for three years, May 26, 1938 (8646-7).

On cross-examination by counsel for New York, the witness stated that the "Mabel G." was built by the Consolidated Ship Building Company in New York in 1925 (8648).

On cross-examination by counsel for Massachusetts, he said the "Mabel G." came out of storage in November, 1935, for a short period for overhauling, was put back in

the shed two months later and has been there ever since (8649); that she was the only one out of storage in the Winter of 1934-5; the previous year the "Mabel G." was out of storage and the "Isola Stella" was out for a couple of months for reconditioning (8650); in 1930, 1931 and 1932 both boats were out, after that only the "Mabel G." was out; that he saw Green last actively moving around the ship yard in 1934 and in 1935 and 1936 did not see him at all (8651-2).

Irene (Mrs. Lincoln) Brown, of Miami Beach, Florida, wife of Lincoln Brown, electrical contractor, now electrical inspector of Miami Beach, testified that she saw Green while employed in her husband's place of business and talked with him on numerous occasions around 1929 to 1932 (8655-7); he spoke about the climate of Florida and how happy the people seemed to be, about his flowers and garden and the way things grew; he got a big kick out of watching the people from his car and said down in this country it is a continuous show, something going on all the time, betting, horse races, dog races, boat races, and said he could not see why anyone would not be the happiest person in the world in Florida; if he happened to come back from his vacation he would say how happy he was to be back and that after being back in Miami Beach a few weeks he would feel wonderful; witness asked him once if he felt so wonderful why he didn't stop taking the medicine and he said, "I am not able to go around like other people, I cannot digest my food, and therefore I have to take something to help me do it" (8658-9); he referred to himself as a cracker and when he happened to be going away on his vacation, he would say he guessed he was going away but it would be only for a short time and he would be back; when witness asked him why he didn't stay all through the year, he said, "I would if there were not so damn many mosquitoes"; on one occasion when he came back and she was complaining, he said "I cannot see how anyone can kick; when I am here for a couple of weeks I could get out and dance if I had a couple of legs like you" (8660); on another occasion, when he was carrying a handful of diamonds, witness asked him if he was not afraid and he said, "No, we have the finest police force on Miami Beach" (8660-1); she never heard him men-

tion New York or Texas; he spoke about how people came down there from all over the world to enjoy the climate and "us crackers just take it for granted"; he said there was not a day in the whole season that he could not go out riding some part of the day (8661-2); that he was as near Heaven in Miami Beach as he ever expected to be (8662).

Witness identified a statement she made to counsel for Florida and the same was given in evidence as Mass. Ex. No. 463 (8696).

Charlie W. Pierce, of Miami Beach, Florida, testified that he was connected with the Miami Police Department and met Green when he was a traffic officer at the Causeway which Green had to cross on his way to Star Island from Miami Beach; sometimes he would pass from eight to twelve times; on many occasions he would stop to talk and witness has seen him making purchases of jewelry, dress goods, etc. (8672-4); he discussed traffic conditions with him and also his roses and the climate and on several occasions, said that anyone who could afford to live down here and did not was crazy; the only other place he ever heard him mention was New York; he said he shipped the jewelry he bought to New York by trunk; that Green had the right of way over everything except the Post Office and Fire Departments (8679-80).

Charles E. Brooks, of Miami, Florida, testified that he was formerly from Texas and met Green after the 1926 hurricane, when he was Superintendent for the City of Miami in the construction of bulkheads, bridges, etc., and in connection with the disposition of rubbish parked near his property on Star Island (8685); that he had to make a daily inspection of the Island and of the City and saw Green frequently; discussed roses with him because the City of Miami Beach wanted to grow some roses and when he asked him where he got his roses, he told him Tyler, Texas, and gave him the address; his place was kept in perfect condition and it was a show spot of Miami Beach (8687-8); in 1928, he had a conversation with Green about a building under construction and referred to the number

of buildings that he had there and Green got mad and said it was none of witness' business, he was building it for his own home and expected to live there the rest of his life (8689); that they discussed Texas, where witness was born, and he asked Green why he did not reside in Texas any more and he replied, "According to his health, the salt air and warm climate here had prolonged his life so much more than any of the doctors that attended him, and that is the reason he bought that place at Miami Beach"; he said that Miami Beach was the garden spot of the world and had the most efficient City Council and Police Force of any City in the Country (8689-90); he said that he had resided in the Town of Terrell, Texas, but did not say how long (8691).

JOHN E. HERRICK, of Miami, Florida, testified that he was a patrolman in the Police Department of Miami Beach and met Green when detailed for duty at Star Island when Green was giving a party and met him occasionally while traffic officer and conversed with him; when he first saw him on his arrival he would welcome the Colonel, who would reply, "Yes, I am glad to be home"; on another occasion, he said he had been very ill and the long train ride was very fatiguing, he was much pleased to get back to Florida with the sunshine which he knew would cure him and he was in hopes in the near future to be able to remain here the entire year (8715); this latter conversation was in the year 1933-4 or 1934-5; he was always very courteous to the police, treated them as equals and referred to them as his boys, tipping them liberally and at Christmas he had an envelope for each of the officers with a twenty-dollar gold piece in it (8716).

R. V. WATERS, of Miami, Florida, testified that he was President of the Miami Airport Association, engaged in the promotion of aviation, with a membership of about 150, most of whom were local people; Green talked with him frequently and visualized Miami's aviation possibilities from a commercial standpoint, as an international airport, especially between North and South America, and also from a military point of view, and favored aggressive action in the development of these possibilities; he was very much

interested in the possibilities of a Trans-Atlantic route by what was called the safe southern route by way of the Latin Countries, around the African Coast, across the Eastern Coast of Brazil and the West Indian Route (8721-24); he was interested in the lighter-than-air development and urged them to do the work of development; he said the Creator had been good to us by putting us at the strategic cross-roads of international travel, and he gave a trophy to the Greater Miami Airport Association to be raced for each year, the winner to get one of the replicas with his name engraved on it, the master trophy to remain in Miami; it cost around $5,000 (8726-8).

Fla. Ex. No. 168, receipted bill of Caldwell & Company, Philadelphia, September 1, 1931, for a special silver Miami All American Air Races Trophy at $2400 and six special Miniature Trophies at $750, making the total cost $3150, was given in evidence (8729); also Fla. Ex. No. 169, letter to Green from C. H. Reeder, Mayor of Miami, May 25, 1931, suggesting a design to be adopted and thanking him for his generous interest, was given in evidence (8732); also No. 170, letter from Green's secretary to R. V. Waters, Chairman, Air Race Committees, declining to sponsor the night air races in January because of unsettled conditions, was given in evidence (8736).

Counsel for Florida also gave in evidence the following Exhibits:

No. 172, photograph of Green and his dog Stella in his automobile; No. 173, letter from Morris Rubin to Green, December 21, 1935, stating that he had a fine collection of coins to show him; No. 174, letter enclosing subscription to the American Stamp Digest, December 7, 1935, giving his address as 46 Star Island, Miami Beach, Florida; No. 175, letter to Green from Milton Bradley Company, Springfield, Massachusetts, March 30, 1933, offering certain jig saw puzzles, and No. 176, receipted bill of the Milton Bradley Company, March 14, 1933, for $268.13 for jig saw puzzles; No. 177, letter to Mrs. Betty Kern Wright, Miami, enclosing check for $100 for a dog trophy in the name of Stella, and No. 178, acknowledgment from Mrs. Wright on behalf of the local Kennel Club thanking him and enclosing a membership card; No. 179, letter from W. A. Kohlhepp, November 27, 1928, soliciting a subscription for

the election of Louis F. Snedigar as Mayor of Miami, and 180, Green's reply, November 30, 1928, enclosing check for $500 to aid the campaign, and No. 181, acknowledgment thereof; No. 182, telegram from Green to the Seaboard National Bank, New York City, February 16, 1925, directing a transfer to the Bank of Bay of Biscayne, Miami, of $150,000 for his account; No. 183, letter from Green to the Windham Realization Company February 18, 1927, advising that he had bought $50,000 City of Miami Beach bonds, to be sent to the Seaboard Bank and charged to his personal account; No. 184, confirmation of the sale of said bonds; No. 185, letter from Green to W. K. Potter, March 21, 1928, advising him that he had drawn a check to the Bank of Bay of Biscayne for $50,000 for the purpose of buying stock in that Bank, and No. 186, a letter from the Vice President of said Bank, June 21, 1928, regarding the purchase; No. 187, certificate for 100 shares of stock issued to Green by The Miami Beach First National Bank, April 9, 1928; No. 188, letter to Green, April 16, 1928, from the Assistant Vice President of the Bank of Bay of Biscayne acknowledging receipt of Green's check for $50,000, in the matter of John Sewell mortgage; No. 189, memorandum from Green's secretary to him, September 27, 1928, regarding application of the President of the Bank of Bay of Biscayne by long distance telephone for a call loan of $750,000, to be placed to their credit with the Seaboard Bank, and No. 190, letter to the Vice President of the Seaboard Bank, New York City, September 27, 1928, authorizing the loan from the Estate of Hetty H. R. Green; No. 191, letter of appreciation to Green from the President of the Bank of Bay of Biscayne, September 27, 1928, and No. 192, enclosure addressed to the Seaboard National Bank regarding this loan; No. 193, letter from the Vice President of the Bank of Bay of Biscayne, October 27, 1928, stating that the loan had been repaid by crediting to the account of the Estate of Hetty H. R. Green; Nos. 194, 195 and 196, correspondence relating to the proposed purchase by Green of certain property in Miami for $11,875, which was not effected; No. 197, telegram to Green, June 11, 1930, advising him of the closing of the Miami Bank Trust Company and Beach Bank, and No. 198, Green's letter to the Liquidator enclosing check for $25,000 in payment of the assessment on 250 shares of stock owned by the Green Estate, Incorporated, and No. 199, letter from Green, Sep-

tember 2, 1930, to the Liquidator of the Bank of Bay of Biscayne, enclosing check for $4,[illegible] in payment of the assessment on [illegible] shares of stock owned by Green, and No. 200, letter from Green to said Liquidator of the Bank of Bay of Biscayne enclosing a check for $76,300, assessment on 763 shares of stock owned by the Green Estate, Incorporated; No. 201, proof of claim, July 23, 1930, filed by Green for balance due on open account, $46,388.75; No. 202, letter of Green to W. K. Potter, February 15, 1932, stating, "I have been tempted down here to make some wonderful purchases, so probably the only thing to do is for me to sign another note to Green Estate, Incorporated for $100,000", and No. 203, Potter's reply to Green enclosing note to be signed by him for that amount; Nos. 204 and 205, letters referring to a loan of $600 made by Green to E. S. White, Miami, Florida, July 1932; No. 206, letter from Green's secretary to Potter, July 22, 1932, relating to the loan by Green of $16,000 to Morton Fogal, of Miami; Nos. 207 and 208, correspondence between Green and John Sewell, of Miami, January, 1935, regarding the loan to him of $50,000, and No. 209, letter transmitting proxy for meeting of the Fogal Dry Dock and Storage Company, January 9, 1936 (8737 to 8822).

TOM NORTLEET, of Miami, Florida, testified that he was Judge of the Criminal Court of Record there from 1920 to 1929, knew Green and in a conversation with him about 1926 over a business proposition, Green said, "You can get in touch with me at any time because this will be my home from now on"; this occurred on his house boat in Miami; witness was financial backer of Ed Huff, working on radio, and they understood Green was very much interested in radio, but when they saw him he seemed to be more interested in aviation than in radio (8830-1).

S. J. TUCKER, of West Palm Beach, Florida, formerly of Dallas, Texas, testified that when he first met Green he took a ride in his "one-lunger" the first automobile that came to Dallas about 1897; Green was quite a friend of witness' father and they went fishing together; while Green's rail-

road headquarters were at Terrell, he spent most of his time at Dallas; witness had a younger brother Fritz who worked for Green in some of his experimental work (8836); the father of witness was a Judge of the Forty-fourth Judicial District of Texas; witness left Dallas in 1909 for Houston, remained there in the railroad business until 1913, then went to New York engaging in the bond business with Bonbright and Company until he went with the National City Bank; in New York he called upon Green for business reasons and because he had known him in Texas; on one occasion about 1913, in referring to Texas, Green said, "If it were not for my mother's business I would not stay in this place, because up here it is dog eat dog; I would like to go back to Texas where a man is a man, whether he has a dime or not; I hope some day to go back there to live" (8839); in the Spring of 1924, witness had a son who was not expected to live and sent his family to Florida and the boy came back so robust and healthy he closed up everything and in the Fall of 1924 came to live in Florida, engaging in farming and the real estate business; later he was appointed by the Federal Court receiver for a number of concerns and on visits to Miami saw Green's secretary, Walter Marshall, who told him Green wanted to see him; when he came to Miami in the Spring of 1934, he saw Green, who greeted him cordially, asked about his family and how he came to Florida and said, "Up in New York, you told me that you hoped to go back to Texas to live;" witness said, "Yes, I did, but I didn't know Florida then, Colonel, it has given my family such health and I have made money here; I think I will just stay here and reside; but you said up there in New York you hoped to go back and spend your days in Texas;" "Well," he says, "Tucker, I thought so then but now I am down here, I have this comfortable home, I have privacy, I can do as I damn please and this is my home and I expect to live here the rest of my days" (8841-2).

On cross-examination by counsel for Massachusetts, witness said this conversation occurred in the Spring of 1934; Green was on his front porch in his wheelchair about to be lifted into his automobile; he seemed to be very feeble physically; he discussed things they had both known perfectly lucidly but his physical condition seemed to be quite weak (8843).

L. G. Fields, of Miami, Florida, testified that he was local manager of the Graybar Electric Company and was well acquainted with Green, sold him a lot of merchandise for his home on Star Island and had a number of personal visits with him in which they talked about a little of everything; on one occasion they discussed stock rights in the American Telephone & Telegraph Company, in which Green was a large stockholder, and he said he had made enough on his stock rights to offset the loss he had sustained in the sale of the Texas Midland Railroad and incidentally made the statement that when he sold his Railroad Company look, stock and barrel that wound up his affairs in Texas (8847); also in discussing inheritance taxes, Green remarked that he was glad he was a Florida cracker for he didn't have to worry about that; taxes were the thing he didn't like to think or talk about much (8848); he always seemed glad to get back to Florida; on one occasion his dog Sally seemed more frisky than usual and witness remarked that Sally seemed to be glad to be back too and he said, "Yes, she is almost as glad to get back as I am"; after he had had one of his blood transfusions and some one had donated the blood, he made the statement that that fixed him up until he got to Florida, where he would not need a blood transfusion (8849); on another occasion he mentioned that he was a Director in the Chase National Bank and that the Windham Realization Company was his New York office; these conversations with him were frequent and covered a period of years; he told witness on a number of occasions he was always glad to get back and "hated like the devil to leave" (8850).

On cross-examination by counsel for New York, witness testified that he saw Green every year he was in Florida; he was at his place of business two or three times a week; in frequently he talked about his stamp collection and seemed to be interested in it (8851).

On cross-examination by counsel for Massachusetts, witness testified that on one occasion he spoke of the boys of the Massachusetts Institute of Technology being ambitious to smash the atom at his place at Round Hills and also talked about his radio station there which he said cost a lot of money to operate (8852-3).

On cross-examination by counsel for Mrs. Wilks, witness understands he called himself a Florida cracker in the same sense that witness does; in discussing the A. T. & T. stock rights, Green never told witness that the largest amount of

that stock he ever owned was 34 shares; witness believed what the Colonel told him about it (8854-5).

M. L. Watson, of Miami Beach, Florida, testified that he conversed with Green fifteen or twenty times in the course of their acquaintance and in these conversations Green seemed to feel better here than anywhere else, liked the country and referred to it as God's Country; on one evening about sunset, he visited Green at Star Island and stood on the lawn watching some sailing canoes and the Colonel waved his hand and said, "Is not that beautiful; that's God's Country; what more could a man ask than to live and have a home in a place like this"; that conversation was in 1931 or 1932 (8859).

Helen Graber, of Fort Pierce, Florida, testified that she was a graduate nurse for fourteen years and was employed by Green from April, 1934, until he died, at Miami Beach and Round Hills, Massachusetts; that until he left for New Bedford about the 18th of June, 1934, he was feeling quite good and his condition at Round Hills was about the same; he left Round Hills that year about December 18th for 46 Star Island and remained there until about May 10, 1935; witness was with him all the time at Star Island as day nurse; the chauffeur would take him riding and he went out frequently in Miami; they left Miami about May, 1935, for Marlin, Texas, and stayed there about six weeks at Dr. Buie's Clinic; there he hired a car and chauffeur and went out some and witness went with him; from Marlin they went to New Bedford some time in June, 1935, and left there about November 16, 1935, for Miami, remaining there until the last of April, 1936, when they left for Lake Placid, New York; witness remained as his day nurse during all of this period until his death (8862-9); in 1934, at Round Hills they went out to ride infrequently, not as much as in Florida; in 1935 at Round Hills he went out occasionally but not as much as in Miami; in Massachusetts, Green did not seem to enjoy going out riding as much as he did while in Miami; he didn't seem interested in things there and the weather seemed to bother him; witness tried to encourage him to go out and he said the people there bored him so—

bothered him too much (8870-2); in 1935 he had planned to go to Florida about the first of November but Mrs. Green was ill and that delayed his going; before going to Lake Placid in 1936, Green said that he was going against his wishes but if he was able to and had his way, he would go to Arizona instead of Lake Placid (8873).

On cross-examination by counsel for New York witness testified that Green was pretty sick when he left in 1936, gradually getting weaker but was still able to go riding in his car (8873).

On cross-examination by counsel for Texas, witness testified that Miss Ruth Salmon was night nurse; that during all of the period witness was there from April, 1934, he had a nurse in constant attendance (8875); that witness knew Green always claimed Texas as his legal residence and expressed a desire to go back to Texas in the Spring of 1936 to Dr. Roche, but on account of the altitude at Lake Placid, Dr. Roche sent him there (8875-6).

On cross-examination by counsel for Massachusetts, witness testified that in 1936 Green said if he had to go to a high altitude, he preferred to go to Arizona to Lake Placid; that it is probably correct that in 1935 he left New Bedford for Miami and Jacksonville November 24 (8878-9); in 1934, he did not leave New Bedford until December 16 and there was no reason for delaying his departure that year except his own preference (8879); that he was growing progressively worse during the time witness was with him; up to the time he left in 1934, the weather had gotten pretty rigorous and he stayed there notwithstanding the cold; witness does not know why he did not want to go out more at New Bedford except he said it tired him too much; people wanted to see him and he didn't want to be bothered (8881).

On cross-examination by counsel for Mrs. Wilks, witness testified that Green was an invalid and under treatment from the time she knew him in 1934 but would not say he was a very sick man; he was never seriously ill until a few weeks before his death; he continued his general routine and in the two years she was with him he had two serious illnesses but except for these he was in pretty good shape (8883-5); that the servants were always sent ahead to prepare Round Hills or Star Island; that she attended the funeral services at Round Hills and the house was in the

condition in which it was in the previous years when the Colonel occupied it (8886).

On cross-examination by counsel for New York, witness stated that she did not know as a matter of fact why Green remained at Round Hills until some time in December, 1934 (8887). In response to questions by counsel for Texas, witness stated that Green disliked Lake Placid very much (8888).

In answer to question by counsel for Massachuetts, she testified that when she went with Green in 1934 he weighed about 166 pounds and in answer to a question by counsel for New York, she said she could not recall all Green said about Lake Placid except that it was the place where all the T. B.'s go and he did not want to go there (8888-9).

Alfred Hess, of Miami Florida, testified that he was connected with the Equitable Life Insurance Company of New York and had been in business in Miami since 1927 as agent of that Company; in 1931 and 1932, he filed an application for some annuities for Green and obtained from him the information to go into the application; that Green, when feeling good, liked to joke; that he said to him, "How can you write an annuity for me; I am a resident of the State of Texas" and witness replied, "Colonel, the fact that you are a resident of the State of Texas does not exclude the life insurance company from writing you life insurance or annuities; my Company, like most of the big companies, is not licensed to do business in Texas but they have no jurisdiction over a resident of Texas who makes an application or pays for life insurance outside of the State; as a matter of fact, a great many thousands of dollars of business is being placed by residents of Texas outside of the State of Texas because many of the big companies don't operate there" (8893); witness convinced him he could write the application for an annuity and asked for the information regarding residence required for the application—whether he wanted to use the State of Massachusetts, New York or Florida, and said, "Why don't you use Florida" and he said, "I have got a big home over here on Star Island and spend more time in Florida than I do in any other place"; witness wrote 46 Star Island, Miami Beach, Florida, as his residence; the number, as witness recalls, was

given by Colonel Green; he gave that as his home address by Green's direction (8893-5).

On cross-examination by counsel for New York, witness testified that Green could not buy insurance because not physically able to stand an examination and that he did not buy any annuities; he was not examined by a physician but told witness he was not able to stand an examination; witness said it was not necessary to stand a medical examination for the annuities; he gave witness the information for the application but did not sign it himself because it was not necessary for him to sign until he approved and paid for it; under the Equitable Company's procedure, when the application is not signed, it is sent back in duplicate attached to the contract, which is signed by the registrar, and the annuitant, if he buys the annuity, signs the application at the time he pays for it; the registrar's signature is what makes the annuity application final; so many people feel that if they sign an application they are obligating themselves to take the contract—it is a sales trick (8898); that witness saw Green almost every day for six weeks; told him the contract was in and handed it to him for his consideration and he said he would let witness know; he finally said he would not be able to take it and asked him to come by the Island and get the contract from his secretary; that was in 1932 and he said finances were such he decided not to take it; among other things, the stock of his Bank was down and he was buying that; witness first wrote him an annuity in 1931 for $1,000,000, which he paid little attention to; of the last two contracts ordered, one was in excess of $400,000, the idea being to buy it so the type of the annuity would preserve about ninety odd per cent of the purchase price in cash and thereafter increase and provide enough death benefits to buy a life income for a number of young ladies that he had officially or unofficially adopted as his wards, as witness recalls, there were nine wards and there was to be produced an income of $200 a month for each one at his death; that witness ordered an additional contract for $100,000 having in mind that if Green felt he could not go in for the total amount that there would be at least a contract for $100,000 that he could buy and also that one or two of the wards were married and he had been giving consideration to the fact of whether there should be enough cash provided to carry the income to the children of the wards; Green later decided that was not necessary and if they had

children they could take care of them themselves (8898-8902); that in 1931 there was no definite information given him and they did not go into details as they did in 1932; that he asked Green whether he should put in New York, Massachusetts or Florida as the residence because in a number of conversations he used to talk about the Waldorf and Sherry-Netherland and Round Hills and witness knew he lived part of the time in Round Hills and in New York.

Witness identified photostat copy of the application referred to by him as Fla. Ex. No. 210 and the same was given in evidence (8915).

Witness further testified that the statement in the application that he had no place of business was not given by Green but was inserted by witness because he was a retired capitalist (8912-13).

Witness also identified Fla. Ex. No. 211, application filled out by him April 23, 1931, but not signed by Green, which was given in evidence (8922), and further testified that the annuities were issued by the Company on these applications but not accepted by Green and were returned to the Company (8926).

On cross-examination by counsel for Texas, witness stated that Green never saw the originals of these applications (8928).

On redirect examination by counsel for Florida, he testified that Green was serious in his statement that the children had not been provided for and said he was not interested in the investment but wanted to make some separate arrangement for the protection of the children and the reason the contract was ordered for the payment to the estate was because he had not obtained at that time the birth dates and it was his intention to get the proof of age of all of the children later to be attached to the contract as in force and change his beneficiary, making it possible to have the contract payable to them subject to the annuity options for them (8930).

Thereupon counsel for Florida gave in evidence the following Exhibits:

No. 212, letter to Green, February 4, 1925, from H. A. Josselyn, enclosing courtesy card of the Police Department of Miami; No. 213, letter from C. H. Reeder, Mayor of Miami, to Green, January 2, 1931, apologizing for an incident which happened while Green was shopping in Miami and assuring him of the freedom of the City; No. 214,

letter from Green thanking Reeder; No. 215, letter from Chairman of the Board of Trustees of St. Francis Hospital, Miami Beach, to Green, March 2, 1931, thanking him for his generous subscription to the bonds of the Hospital; No. 216, letter from Chairman of the Board of said Hospital to Green, March 19, 1931, acknowledging receipt of his subscription of $5,000 to the Hospital bonds; No. 217, letter to Green from the City Manager of Miami Beach, April 29, 1931, stating that as it is their understanding his Miami Beach home will be closed during the Summer they will give his property special police observation; No. 218, letter from John H. Levi, President of The Miami Ocean View Company, to Green, May 12, 1931, soliciting contribution to the Association of Property Owners of Star Island for employment of night watchmen, etc.; No. 219, extract from the minutes of the Board of Adjustment, September 8, 1931, containing a resolution approving Green's addition to his Star Island residence on appeal from a ruling of the Building Inspector; No. 220, letter to Green from Biscayne Bay Islands Company, February 24, 1932, acknowledging his check for $140 for twelve copies of the book "Along Greater Miami Sun-Sea Ara"; No. 221, letter from Green to the First National Bank of Miami authorizing the release of his check held in escrow for said book; No. 222, letter from Green at South Dartmouth, August 11, 1932, to the City Council of Miami Beach regarding the erection of a proposed new bridge from the County Causeway to Star Island; and No. 223, reply from the City Manager, August 15, 1932, to Green reporting the project had been deferred because of lack of funds and No. 224, Green's letter of August 18, 1932, to the City Manager on the same subject; No. 225, letter to Green from the Mayor of Miami, February 8, 1933, enclosing courtesy card and suggesting that he use on his automobile the star sent to him for his splendid civic work in Miami; No. 226, telegram from the Mayor of Miami Beach to Green, June 26, 1933, reporting a fire in his Star Island home; No. 227, letter from the Mayor of Miami Beach to Green, February 1, 1934, enclosing courtesy card, and No. 228, Green's acknowledgment (8932 to 8972).

C. H. Reeder, of Miami, Florida, testified that he had been City Commissioner and Mayor of Miami and gave Green a

star to put on his automobile entitling him to the parking privileges and police courtesies because of his benefit to the community; that witness had received this star in his official capacity, took it off his own car and gave it to Green; that about that time Green had contributed about $3500 to send the Junior Chamber of Commerce Drum Corps to the National Convention and contributed to the Bugle Corps through the witness and a substantial sum to the Children's Hospital (8972-8).

On cross-examination by counsel for Massachusetts, he said that James Donn, of The Exotic Garden Company, suggested that Green be given the star and that Green would like to have that privilege (8979).

On redirect examination by counsel for Florida, witness said that under existing rules this star could not be given to anyone but an outstanding citizen (8980).

On cross-examination by counsel for Mrs. Wilks, he testified that Green was a nationally known character and interested in their local affairs and the giving to him of the star was a courtesy that would be extended to anyone under similar circumstances; that he talked with Green on numerous occasions about his beautiful home at Star Island and never discussed his legal residence with him; witness considered it his home because he spoke of it on numerous occasions, the beauty of the grounds, the architecture, setting, etc.; witness did not know that he was not taxed as a citizen of Florida (8981-2).

On cross-examination by counsel for Texas, witness testified that Star Island was the only place of residence witness knew anything about and never attempted to keep track of Green's movements.

He further testified in response to a question by counsel for Florida that Star Island was the most beautiful place in the whole area (8983).

Counsel for Florida thereupon gave in evidence the following Exhibits:

No. 229, letter from the Miami Anglers Club, April 4, 1928, to Green informing him of his election to regular membership and enclosing receipted bill for initiation fee and dues, and No. 230, Green's membership card in said Club; No. 230-A, receipt for $1,000 from Green to be used for the purchase of the mortgage on the Club property; No. 231, certificate of membership for 1933 issued to Green in the Artists and Writers, Inc. of Miami Beach; No. 232, life

membership card issued to Green in 1934 in said Artists and Writers Club; No. 233, certificate of sustaining membership issued to Green in the Dade County Council, Boy Scouts of America, State of Florida; No. 234, letter from Green to Carl G. Fisher, of Miami Beach, January 22, 1927, regarding membership in the Cocolobo Cay Club, and No. 235, certificate issued to Green, January 25, 1927, for ten shares of the capital stock of said Club; No. 236, letter from the President of said Club to Green, February 12, 1931, calling for his membership check to pay off the purchase money mortgage of said Club, and No. 237, Green's reply enclosing a check for $4,000; No. 238, letter from the secretary to the President of said Club acknowledging receipt of Green's check and No. 239, temporary certificate issued to Green as the owner of two shares of stock in said Club (8986-9006).

JOHN H. LEVI, of Miami Beach, Florida, testified that he was a resident of Star Island and had lived in Miami Beach for twenty years; that he was the engineer that filled in Miami Beach; it was originally a swamp; that he went into the real estate business and was on the City Council for eighteen years and Mayor; that he knew Green from the time he first became interested in Star Island, which was the first artificial island built; Green asked him what was the best place to live and witness told him Belle Island, because it got the southern breeze all the time; they talked it over on his house boat and also discussed his yachts and boats; after considerable investigation, Green bought three lots from his Company; that when Green first came to Miami he lived on the house boat "Colonel," a large boat built like a Mississippi River steamboat, with lovely staterooms and baths and an elevator; Green asked witness what to join and he advised the Polo and Cocolobo Cay Clubs and Green joined them but he does not think he ever went there; that Green joined practically all of the local affairs and they gave several parties on their house boat which was anchored off his place; Green suggested the formation of a local organization to care for Star Island and had meetings at his house; that he was close with his expenditures but willing to pay for whatever he wanted; he had an orange tree there and when he found the fruit died because citrus fruit does not grow on the beach, he tied a few oranges on the tree and

that is the tree that he said he shipped 2500 crates of oranges off; he liked that sort of thing; his shrubbery was very fine; there was no nicer home on Star Island or on Miami Beach; that Green was a fine man and helped people out and gave a great many blind people radios (9014-9022).

On cross-examination by counsel for New York, witness testified that Star Island got only the north breeze; in Miami, the prevailing winds are south and southeast; in building an all-year-round house you should select a place where you would get the south breeze; witness suggested to Green that if he were going to live there all the year round to buy the south end of Belle Island from a competitor of his, but he eventually bought from witness; on one occasion he said he could not vote for witness at the local election because he voted in Texas (9023-5); witness admitted that in his testimony in the probate proceedings, he had testified that Green said regarding the advantages of Belle Island over Star Island from the standpoint of year round residence, "it is only a Winter place and under those conditions it does not make much difference whether you face north or south; all year round it is preferable to have a southern exposure" (9029). On cross-examination by counsel for Texas, witness said he did not remember testifying that Green said he would only be there in the Winter or that it was only a Winter place but if he so testified Green must have said it (9034-35); that the expressions in the deeds "Colonel E. H. R. Green of the County of Kaufman, State of Texas" appeared in the deeds from his Company as directed by Colonel Green and his attorney (9036); Green told him on two or three occasions when he was running for the Council that he could not help him out because he voted in Texas; Green told witness that each time he ran (9037).

On cross-examination by counsel for Massachusetts, witness admitted receiving Mass. Ex. No. 211, a letter from Green to the witness, dated October 26, 1926 (9038); that Green asked him to advise him at South Dartmouth but whether he referred to it as "home" witness could not say (9041); that Green talked to him about television and radio, not about aviation, and asked him why he didn't come to South Dartmouth and also why he didn't come to the Texas Springs and take some of the baths (9042); that the last two years his physical condition was

worse but mentally it was not worse—his mind was alert (9043).

Counsel for Florida thereupon gave in evidence the following Exhibits:

No. 240, membership card issued to Green in the Dade County Tax Relief Association, showing dues paid for 100 memberships to February 1, 1932; Nos. 241 to 249, correspondence with the Flamingo Polo Club regarding the reservation of space for the seasons 1926-1930; No. 250, membership card issued Green in the Florida Outboard Motor Association for 1932; No. 251, certificate of membership issued to Green in the Florida Peace Officers' Association, January 29, 1932; No. 252, similar card for the year 1933; Nos. 253 and 253-A, similar cards for the year 1934; No. 254, life membership card issued Green in the Greater Miami Athletic Club; No. 255, invitation to membership in the Hialeah Club and notation that check for $110 was sent to the Club; No. 256, membership card issued Green in the Little Theatre, Miami, Florida; No. 257, membership card issued Green in the Miami Beach Rod and Reel Club, and No. 258, letter from the secretary of said Club to Green, May 6, 1935, acknowledging receipt of his check, and No. 259, certificate of member ownership in said Club issued to Green; No. 260, letter to Green, March 24, 1934, from the Palm Beach Yacht Club thanking him for his support to the regatta; No. 261, certificate of honorary life membership in the Southeastern Florida Yacht Club issued to Green; No. 262, voting trust certificate issued Green in the Surf Hotel Corporation for ten shares, and No. 263, letter to Green relative to the loss of said certificate, and No. 264, letter from Green forwarding affidavit and bond covering the lost certificate; No. 265, letter from W. K. Potter to Green's secretary relating to the same and stating check to the order of the Surf Club for $3,000 had been issued; No. 266, letter from Waterways-Highways Association, July 31, 1927, to Green acknowledging check for membership, and No. 267, membership card; No. 268, temporary receipt of the Miami Community Chest to Green for $1,000; No. 269, letter dated November 18, 1927, to Green, South Dartmouth, Massachusetts, from the Shrine Committee, Mahi Temple Miami, Florida, soliciting contribution to the convention; No. 270, Green's reply enclosing check for $1,000, and No. 271, Committee's acknowledgment; Nos. 272, 273, 275 and 291, letters from Green in

1930, 1931 and 1932 enclosing checks for $250 to Rev. Elisha A. King, of The Community Church, Miami Beach; No. 274, letter from Green's secretary to Mrs. B. H. Palmer, Miami, February 4, 1932, enclosing $200 for the Junior League; No. 276, letter to Green, March 24, 1932, from the Chairman of The Ann Booker Benefit Fund Committee and pencil notation thereon showing a contribution of $619; No. 277, statement in connection with her funeral expenses; No. 278, letter of thanks from her mother to Green; No. 279, letter to Green thanking him for paying the funeral expenses; No. 280, letter to Green from the committee of citizens thanking him for his contribution on behalf of Ann Booker; No. 281, letter from Mrs. Bascom H. Palmer, March 6, 1933, to Green making an appeal on behalf the Junior League Children's Home of Miami; No. 282, letter from Green to the City Manager, Miami, May 4, 1933, enclosing a check for $5,000 for the Children's Ward of the Jackson Memorial Hospital; No. 283, letter from Green, May 8, 1933, to George Hussey thanking him and others for remarks made by radio regarding his donation, and No. 284, acknowledgment from Mr. Hussey, inviting Green to be guest of honor at the annual dinner of the Artists and Writers Club; No. 285, letter from Jackson Memorial Hospital, July 31, 1933, stating they are preparing a design for the entrance to the Children's Pavilion with the inscription "Colonel E. H. R. Green Children's Pavilion"; No. 286, photograph of the entrance to the Children's Pavilion showing the inscription; Nos. 287 and 288, photographs of the ward; No. 289, letter from William A. McAllister Post No. 1608, Veterans of Foreign Wars, January 5, 1934, asking a subscription to the annual stamp sale for welfare work and notation thereon of check sent; No. 290, acknowledgment of contribution to order of the Eastern Star, March 11, 1934; No. 292, letter to Green soliciting contribution to Greater Miami Dixie Boosters Club and notation of check sent (9048-9167).

Counsel for Florida also gave in evidence the following Florida Exhibits relating to automobiles owned and registered by Colonel Green, of 46 Star Island, Florida:

Nos. 293 to 297; Nos. 299, 300, 301 to 305, inclusive; Nos. 308, 310 to 312, inclusive; Nos. 314 to 316, inclusive, and Nos. 319 and 320 (9167-9323).

Also the following Florida Exhibits:

No. 298, quit claim deed from Stein and others to Green, "of the County of Dade and State of Florida" (9193); No. 306, bill of sale of transfer, April 30, 1930, from Alfred Frei and wife, and No. 307, deed between the same parties conveying certain land in Dade County, Florida (9236-47); No. 313, deed from Green and wife, of Dade County, Florida, January 20, 1931, to the City of Miami of certain land for the widening of the Miami River (9283); No. 317, copy of mortgage deed from Morton Fogal and wife to Green, of Dade County, May 26, 1932, of certain land in Dade County to secure $16,000 note (9301); No. 318, copy of deed, May 11, 1935, from Green and wife, of Dade County, Florida, to Durrant and wife, of the same place, of certain land in Dade County (9312).

Dr. John Barrett, of Coral Gables, Florida, testified that his first visit to Florida was in 1889, and he became a resident of Coral Gables at the time of his marriage; that formerly he was head of the Pan-American Union in Washington; that he knew Green as a boy; Green's home was in Bellows Falls, Vermont, and witness was born and raised a few miles away at Grafton, Vermont; their parents were close friends (9331-3).

After exhaustively describing his extensive diplomatic career, during which he occasionally saw Green, witness said he came in contact with him more closely in 1927 to 1929 and thereafter in his various conversations with Green from the time he met him casually in Florida until he went away to die, he spoke of this as being his home and of the witness and himself being fellow residents (9331-41); that Green spoke on one occasion after 1933 of what witness had done in Washington and of Carnegie's gift of $1,000,000 and said, "Down here, they do not understand or appreciate these things but if my things work out all right I am going to add a Codicil to my Will and pretty nearly duplicate that sum for you to build in Miami a great Pan-American Building that you will preside over as long as you live and that will be presided over after you have gone by the men you have named" (9342); that was their last conversation; the last time witness saw him he said, "You have a lovely home at Coral Gables and I have a nice home here located in an entirely different way; you have land all around you and

I have the water all around me and we must get together and talk over old Vermont relations;" that they discussed being buried back in their home towns in Vermont under the Green Mountains, he at Bellows Falls, which was the port of Grafton twelve miles away, and the witness at Grafton; they agreed they wanted to be interred in the soil of Vermont from which they sprung (9344-5).

Thereupon counsel for Florida gave in evidence the following Exhibits:

No. 321, letter from Green to his sister, Mrs. Wilks, dated Miami Beach, February 2, 1925, in which he says:

"I have just been advised by Mrs. Lee that you have had a very bad attack of Laryngitis. Since leaving New York, January 2nd, in that terrible snow storm, we have not seen a day down here when the temperature was below 72. The motto down here is: 'It is always June in Miami.' The roses and all the flowers are in bloom. You will remember that in New York your bad brother told you that you would have to quit suffering from the throat trouble in the future" (9367-8).

No. 322, letter from Green to W. P. Allen, Terrell, Texas, February 25, 1928, in which he says:

"I received a copy of the order of the Interstate Commerce Commission concerning the Midland and I note the lease becomes effective on March 1st.

The weather is warming up here now pretty well, which, of course, always loosens my joints considerably. My general health is good and I am out in the open most of the time" (9369-71).

No. 323, letter to Green, Asheville, North Carolina, from H. D. Campbell, Vice President, Chase National Bank, December 3, 1930, enclosing a newspaper clipping of a poem about the weather suggestive of Green's comment to him at New Bedford and reporting on banking conditions here and abroad (9374); No. 324, Green's reply, December 9, 1930, in which he says:

"I think the condition of my health makes me believe it is better for me to lie still in bed than to get up and try to fight the elements. I noted what you said about Grove Park Inn, but I am leaving tonight to get some of the Southern sun-

shine. Any time you see any clearing up of the skies up there I would like to hear about it down in the sunshiny country" (9377).

No. 325, letter from Green, Star Island, Florida, to Dr. Pascal, February 4, 1933, in which he says:

"We have been in Miami two weeks today and, as requested, I beg to report that I have taken a ride each afternoon, returning about 4:30 o'clock. Then I get in from a half to an hour's sleep, after which I go down to supper. After supper I return to my room and play with jig-saw puzzles until about twelve o'clock, which is very entertaining. I have been sleeping from then until nine or ten o'clock next day, when I am pulled to pieces by the Norwegian with a massage. I have taken all the medicine except the digitalis morning, noon and night and have run out of the tonic capsules. My pulse has been about the same, the lowest 72 and highest 94, in the morning. I have not seen very much change. Of course, everybody coming to Florida has that feeling of being acclimated, being tired and wanting to sleep for about two weeks, which I think I am getting over" (9381).

No. 326, letter from Green to Dr. Pascal, March 7, 1933, in which he says:

"In regard to myself: I am still taking your tonic medicine. I go out every day, but return at 4 o'clock and lie down and rest. I work a jigsaw puzzle every night. The only difference I see in myself is that my two shoulders and neck seem to get stiff and pain. I attribute this to sitting in the car with all the windows open. We have had kind of a cold spell down here, which I think accounts for my rheumatic conditions. My pulse in the morning has run about 80 to 90, but after I retire at night it goes down to about 78. I am not taking any digitalis. My blood pressure is 147. My color seems to be about normal and my appetite is good. In fact, I seem to be picking up all around. I am enclosing the 'little nurse's' report" (9384-5).

No. 327, letter from Green to H. D. Campbell, Vice President of The Chase Bank, May 4, 1933, in which he says:

"I am in receipt of your letter of May 1st and assure you that your interest in my welfare is greatly appreciated.

Since I have been in Florida this time there seems to have been a constant improvement in my condition, and while it has been slow, it appears to be sure and, I hope, permanent" (9386).

No. 328, letter from Green to Harry Neyland, New Bedford, March 9, 1933, enclosing a check for $150 for a whale's jaw and authorizing fitting up of the "Morgan," in which he says:

"I regret to hear that you are having such severe weather up there. In comparison, will say that down here it is just about perfect and has been all season" (9387).

No. 329, letter from Green to Maynard, Inc., Miami, Florida, March 28, 1927, about the installation of clocks; No. 330, letter to S. Daenitz, Miami, Florida, May 14, 1928, in which he says:

"I have watched with interest the seventeen Sangamo clocks installed in my Star Island home last November by you as Special Agent for the Sangamo Electric Company" (9389-91).

No. 331, letter from Green to the Art Metal Storm Shutter and Awning Company, Miami, Florida, June 19, 1928, regarding payment of their contracts "covering my home on Star Island" (9393-4); No. 332, letter from Green to Chief of Police Glenn, Miami Beach, Florida, April 22, 1931, stating:

"The night watchman at my Star Island home, Richard Moss, has requested that, if possible, he be furnished with a policeman's badge, etc." (9395).

No. 333, letter from Green to City Manager Renshaw, Miami Beach, April 30, 1931, stating:

"I am in receipt of your letter of April 29, and thank you very much for the interest you are taking in my Star Island home. • • • My permanent address is 111 Broadway, Room 1104, New York City" (9396).

No. 334, letter to Green, Star Island, from M. Van Weintraub, Miami Surgical Company, February 12, 1932, stating:

"I would like very much to have a talk with you at your convenience, and believe that the best place would be at your home" (9399).

No. 335, letter from Green, Sherry-Netherland, June 3, 1932, to Chief of Police Glenn, Miami Beach, in which he says:

"Before leaving our home on Star Island we removed everything of value; we have a caretaker and a watchman who will be on duty every day and night until our return and I do not anticipate any trouble; however, should the occasion arise, you can always communicate with me at Room 1104, 111 Broadway, New York City, which is my permanent address" (9400).

No. 336, letter from Green, Lake Placid, New York, October 30, 1932, to F. Lowry Wall, Miami Beach First National Bank, thanking him for an old coin and stating:

"As you see, I am trying out the Adirondacks this year, but have hardly been here long enough yet to be able to tell what effect it will have on my general health. I am, of course, hoping for beneficial results. Fortunately, the fire in our home at Star Island was confined to the cedar room on the third floor and only slight damage was done" (9402-3).

No. 337, certificate of Deputy Collector and Assessor of Taxes for Dallas County, Texas, October 19, 1937, that he had custody of the tax records and had searched the assessment rolls and all available records of his office relating to the rendition by and the assessment of the personal property of Green from which it appears that he made no rendition of personal property for taxation in said County for

any year beginning with the year 1910 to the year 1936, both inclusive, except as shown by attached schedule reading:

"Schedule Showing Assessment Against and Payment by E. H. R. Green of Personal Property Tax in Dallas County, Texas, for the Following Years:

Year	Assessed Value	Tax Paid	Roll
1910	$2000	Yes	Reg. (Resident)
1911	2000	—	" "
1912	None	—	" "
1913	"	—	Unknown
1914	"	—	"
1915	"	—	Non-Resident
1916	"	—	" "
1917	"	—	" "
1918	"	—	" "
1919	"	—	" "
1920	"	—	No Assessment
1921	"	—	" "
1922	"	—	" "
1923	"	—	" "
1924	"	—	" "
1925	"	—	" "
1926	"	—	" "
1927	"	—	" "
1928	"	—	" "
1929	"	—	" "
1930	"	—	" "
1931	"	—	" "
1932	"	—	" "
1933	"	—	" "
1934	"	—	" "
1935	"	—	" "
1936	"	—	" "

(9408–12)

No. 338, certificate of Ed Cobb, Assessor and Collector of Taxes, Dallas County, Texas, October 19, 1937, having custody of the records, etc., of real and personal property assessments from 1885 to 1936, that he has searched the assessment rolls and all available records relating to the rendition by and the assessment of real and personal property of Green, from which it appears that he made no rendition of real and personal property for taxation in said County for any year beginning with the year 1885 to the year 1936, both inclusive, except as shown by the attached schedule reading:

"Schedule Showing Assessment Against and Payment by E. H. R. Green of Real and Personal Property Tax in Dallas County, Texas, for the Following Years:

Year	Real Property: Parcels	Real Property: Assessed Value	Personal Property Value	Tax Paid	Roll
(1885					
(1905 Inc.	None	None	None	None	None
1906	1	$1800	$2000	Yes	Reg. (Res.)
1907	3	29000	None	"	" "
1908	4	34000	1800	"	" "
1909	2	25625	1800	"	" "
1910	2	25000	2000	"	" "
1911	2	35550	2000	"	" "
1912	2	18500	None	"	" "
1913	1	15000	"	"	Unknown
1914	1	15000	"	"	"
1915	1	15000	"	"	Non-Resident
1916	1	15000	"	"	" "
1917	1	15000	"	"	" "
1918	1	15000	"	"	" "
1919	1	16500	"	"	" "
1920	None	None	"	None	None
1921	"	"	"	"	"
1922	"	"	"	"	"
1923	"	"	"	"	"
1924	"	"	"	"	"
1925	"	"	"	"	"
1926	"	"	"	"	"
1927	"	"	"	"	"
1928	"	"	"	"	"
1929	"	"	"	"	"
1930	"	"	"	"	"
1931	"	"	"	"	"
1932	"	"	"	"	"
1933	"	"	"	"	"
1934	"	"	"	"	"
1935	"	"	"	"	"
1936	"	"	"	"	"

(9412-25.)

No. 339, letter from Charles W. Pierson, February 10, 1931, to Green, Star Island, regarding change of domicile to Florida (same as Mass. Ex. No. 304½, R. 5218); No. 340, letter from W. P. Allen to Green, New York City, November 7, 1911, in which he says:

"I want to thank you for the interest you took in writing to me • • • which comes to show that you are still loyal to your Texas friends. You don't know how much we miss you down here in Texas, we want you to come to see us at least once a year and not forsake us altogether" (9435-6).

No. 341, letter from Dallas Automobile Club to Green, New York, May 26, 1916, inviting him to be guest at luncheon of the Club May 31st; No. 342, receipted bill of the Dallas Club to Green, March 13, 1919, covering payment of dues as a non-resident member from February 1 to December 31,

1910 and January 1, 1911 to December 31, 1911 (9440); No. 343, letter from J. W. Hoke, Marlin, Texas, October 10, 1923, to Green, Terrell, Texas, in which he said:

"The people of Marlin are highly pleased with the idea of your returning to them for another season. It is gratifying to know that you have gotten benefit from the waters here and we truly hope that the treatment will continue to improve your condition and completely recover your health.

"In passing let me suggest that it is probable that you might get the B. C. Clark home place, if Mr. F. B. McKay, your friend, failed to find just what you want. This property was improved by a millionaire banker at a considerable cost when building material and labor were nothing to compare with what they are today. This place is modern and has furnace heat and spacious grounds" (9443-4).

No. 344, Green's reply from South Dartmouth, October 19, 1923, in which he said:

"I am in receipt of your favor of the 10th instant, bringing to my attention the B. C. Clark home in Marlin, and, in reply, I beg to advise that as yet a decision has not been arrived at in regard to my proposed visit to Marlin" (9445).

No. 345, letter from Charles W. Pierson, New York, March 31, 1927, to Green, Star Island, Florida, regarding sale of the Texas Midland Railroad (9447); No. 346, letter from City Commission of Terrell to Green, January 10, 1928, in which it was stated:

"Although it is with keen regret we learn that the Texas Midland Railroad will probably be sold and the ties which have so long bound you to this City thus to some extent impaired, we nevertheless feel constrained at this time to express to you something of the feelings of this body and of the people of Terrell.

You have many warm personal friendships here, dating back to the time when you were a citizen of Terrell and an active factor in movements for the public good; and there are many others who have been drawn to you by your liberal and helpful spirit towards the town. All of these regret profoundly the prospect of any change in these relations" (9452).

No. 347, letter to Green, Star Island, Florida, March 12, 1928, from B. L. Gill, Chairman of the Board of The First National Bank of Terrell, Texas, submitting his resignation as Director of the Texas Midland Railroad, stating:

"I cannot refrain from expressing here what so many have already done I am sure, the very great love and affection as well as the appreciation that the people of this community have for you, for what you have done for us here, and there has never been a word of criticism of your action in disposing of the Texas Midland Railroad, except that it meant perhaps a lessening of your personal interest in the community which we have enjoyed so long" (9456).

No. 348, letter to Green from Edwin J. Kiest, March 12, 1928, submitting his resignation as Director of the Texas Midland Railroad, in which he says:

"My only regret is that I fear you will no longer pay your annual visit to Texas" (9458).

No. 349, letter from F. B. McKay, Terrell, Texas, March 28, 1928, to Green regarding transfer of personnel of the said Railroad Company, stating:

"If you expect to stop over at Marlin this season on your return East, I trust that you will notify me at the SP city office, Adolphus Hotel, Dallas, and let me have the opportunity of again arranging your return transportation" (9460-62).

No. 350, letter from Green to Henry C. Coke, Dallas, Texas, May 15, 1928, in which he says:

"I regret very much that our mutually pleasant connection on the Midland will have to be terminated; however, that does not terminate any other friendship we have acquired during the past years of our association. The only thing is that now we are in better shape to help our friends when they are in need of assistance; and remember, the 'latch string' is always on the outside of the door. All I ask is that the next time you are in New York, just try once more and see if you cannot get to the 'Old Goat'. But anyway, mail will always reach me.

From an official notice I received lately, I don't see that I have been relieved of anything, except being the 'angel'

for the Midland. I get as much title, if not more, since they are putting me on the Board of Directors of the Texas and New Orleans Railroad. As I understand it, my duties will require that I make one annual visit over the entire system, so I may be able to drop in again once a year to see the old gang at Dallas.

I am having some pretty severe treatments now with an Osteopath, who is 'pulling my leg' worse that it was ever pulled on the Midland. He says that in the course of a very little time he expects to have me walking around; *then* look out for me if I ever get down to Dallas" (9464-5).

No. 351, letter to Green, Star Island, from Dr. N. D. Buie, Marlin, Texas, February 27, 1934, stating:

"We sincerely hope you are enjoying your stay in Miami and wish to say that at any time you get tired of Miami, we will be most glad to see you around these parts" (9468).

A. J. CLEARY, of Miami, Florida, testified that he was a real estate agent and interviewed Green at the Sherry-Netherland as a member of the Depositors Committee of the Bank of Bay of Biscayne after the failure with a view to having him take $3,000,000 of worthless paper in that Bank to rehabilitate the cash reserve by putting in that amount, having a Committee of the Dade County Bar Association sue and establish a loss on each piece of paper which would be a deductible loss in his income tax returns; that he told him about the financial difficulties of the people of Miami due to the bank failures, about the old ladies who had lost their burial fund and parents who had lost their children's education money, etc.; that it was a great chance for a man to do something for humanity and that it would not cost him a dime in the end; that Green asked Mr. Aldrich or some one from the Chase Bank to come up and he said if the plan were acceptable to the Treasury Department he thought it would be a wonderful thing to do; Green, after much discussion, tentatively agreed provided I could get the necessary figures and permission from the Treasury Department; when witness returned to Miami and the Committee found that the figures given them by the bank officials showed a $6,000,000 bank account in New York that

was not worth a quarter and we needed $9,000,000 instead of $3,000,000, witness had to write Green a letter which ended the transaction; in 1928 or 1929, as Chairman of the Mayor's Unemployment Fund to raise money to provide work after the hurricane and depression, he visited Green and among other things they had a sewing project to make clothing for underprivileged children and give work to mothers, and as he recalled Green donated $500 for clothing (9470-76).

On cross-examination by counsel for New York, he said he saw Green in his apartment in New York in the month of June, 1930, four or five days after the failure of the Bank.

On redirect examination by counsel for Florida, he testified that while waiting for the gentleman from down town in New York, Green subjected him to a rigid cross-examination about all of Florida and every one in it; he also spoke of New York and his place in Massachusetts; he referred to New York as a stop over place between Florida and "my place in Massachusetts," as he put it; spoke glowingly of Florida; said he had been coming down there a long time and loved it more and more as he went on; that he felt better there and it was God's Country and on his place in Star Island was going to make a lot of improvement and stay there more and more each year (9478).

Harry Neyland, recalled as a witness for Florida, identified Fla. Ex. No. 352, as a letter he received from Green on the stationery of the Lake Placid Club, dated November 4, 1932, in which he said:

"The reason I went away so suddenly was that it was up to me to decide whether I should take another blood transfusion or get up into a high altitude and away from the dampness at Round Hills" (9485).

He also identified a letter from Green to the witness, March 7, 1925, and stated that the first time he saw the letterhead used on this letter was when it was placed under his plate at a dinner with Colonel Green before leaving Massachusetts in 1924, and he received the letter in due course of mail from Star Island. The same was given in

evidence as Fla. Ex. No. 353. Upon the letterhead is printed "The Whaler 'Charles W. Morgan' Enshrined and Round Hills Repository of Maritime Antiquities South Dartmouth, Massachusetts" (9488).

The witness thereupon identified a typewritten document, with pencil insertions and erasures, as a speech which Green delivered at the dedication of the "Charles W. Morgan" and said that after Green finished reading it, it was given to the witness and to the Press and printed and a copy returned to witness; that the words in the speech "at our home" were crossed out by Colonel Green himself. The same was given in evidence as Fla. Ex. No. 354 (9491-3 and 9496).

The witness also identified the New Bedford Sunday Standard, November 9, 1924, with the headline reading, "Round Hills Now Abounds with Spirit of Old Whaling Days," as containing a report of an interview with Green when he first became interested in the "Charles W. Morgan"; that Green discussed this article with witness and expressed his approval of the article. The same was given in evidence as Fla. Ex. No. 355 (9499-9500).

He also identified the first page of the Evening Standard of New Bedford, Wednesday, July 29, 1925, as containing an exact interview as Colonel Green gave it to the reporter on the Evening Standard; that Green discussed it with the witness the day after its publication, showed him the article and said, when he expressed his surprise and pleasure, "Well, I am going to make Round Hills a public park, a public place, and I might as well do it now as any time"; they read the article over together and Green approved it. The same was given in evidence as Fla. Ex. No. 356 (9512-14).

Witness further identified a photograph of an old whale craft shop that stood in New Bedford, which he had bought and which was moved to Round Hills, where it now stands, and stated that the article in the New Bedford Times above was discussed by him with Green, who approved it. The same was given in evidence as Fla. Ex. No. 357 (9521).

He further testified that he purchased this shop for the Round Hills Repository of Maritime Antiquities at the request of Colonel Green for $650 (9527), and also identified an article in the Morning Mercury of New Bedford, Massachusetts, Wednesday, March 30, 1927, headed, "Oil Refinery and Candle House at Round Hills. Harry A. Neyland Gather-

ing Old Machinery for Colonel Green, to Be Placed in Replica of Old Factories of Early Days of Whaling," as a report of the activities of witness in gathering the old refinery, machinery, etc., which he purchased by Colonel Green's direction; after the article was written, witness discussed it with Green, who approved it as setting forth his plan (9528). The same was given in evidence as Fla. Ex. No. 358 (9530).

Witness also identified a piece of newspaper from the New Bedford Times, Tuesday, August 9, 1927, headed, "Building For Oil Refinery Given Society," as an article which he discussed with Green after it was given out to the Press and he approved it (9531). The same was given in evidence as Fla. Ex. No. 359 (9533).

The witness further testified that Green gave him a commission to make a bronze tablet for his mother and also said that he had a portrait of his mother that he was anxious to bring to Star Island; he wanted to have a copy of that made for Round Hills, as he always wanted to have her portrait hanging there, but the original he wanted to take to Miami Beach, his home there; he said he was collecting things for the Hetty Green Memorial for which he intended using the Round Hills house, and he wanted her portrait there as well as the bronze tablet of her (9535).

On cross-examination by counsel for Massachusetts, witness testified that the speech was made by Green at the dedication July 21, 1926 (9536); that he had made no formal claim and engaged no attorney but that he had mentioned to the Administrator of the Estate of Colonel Green that there was certain property of his in their possession which belonged to him (9540).

Counsel for Florida thereupon gave in evidence the following Exhibits:

No. 360, letter from Green to Charles E. Lauriat Co., Boston, Massachusetts, November 17, 1924, in which he said:

"We are preserving the old bark 'Charles W. Morgan,' and, adjacent thereto, we are establishing a museum, but changing a little from a regular museum, it will be a novelty, as we will call it a Whalemen's Exchange, a place where anybody wishing to know anything about any of the old whalers in the United States can ascertain the record of the boat in which they are interested.

We are not interested in sea stories, which are about the adventures of one particular man, but we are interested in

the historical works and records of whaling history, giving dates, names of boats, etc., so that we can have a reference library where the record of any whaler that sailed from America can be looked up.

If you will submit to me a list of such books of this nature as you may have, I will check it with lists in my possession, and see if we cannot again renew our friendly relationship and I become a customer of your firm again" (9545).

No. 361, letter from Ralph Hayes to Green, October 22, 1925, regarding Press accounts of Green's possible plans for making Round Hills into a perpetual memorial (9547); No. 362, telegram to Green, Waldorf-Astoria, New York City, from Harry Neyland, June 8, 1927, inviting Green to extend to the people of Dartmouth a welcome on Dartmouth Day (9549); No. 363, letter from Green, Waldorf-Astoria Hotel, June 28, 1928, to the President of the Southern Pacific Lines, acknowledging notification of his election as a Director of the Texas and New Orleans Railroad Company, which concludes:

"I am now getting ready to leave for my country place at South Dartmouth, Mass., and any time I can be of service to you or the Midland, you can get into communication with me there" (9551).

No. 364, letter from Green to W. P. Allen, Terrell, Texas, July 13, 1931, asking him to advise the Mayor of Terrell they would accept $15,000 payment on the Water Works Bonds of the City of Terrell at any time and stating they would reduce the rate of interest on the deposit of $100,000 to the Green Estate, Incorporated, had with his Bank bearing interest at 4% and concluding:

"As usual, we arrived here on July 1, but so far, the weather has been anything but pleasant—foggy, cold and nasty nearly every day. However, for a change this is a very beautiful day and if it will just continue this way, it will help me considerably" (9554-56).

No. 365, letter from Green to Miss Edith M. White, June 14, 1932, enclosing contribution of $1,000 in the name of Margaret McElroy (9557); No. 366, letter to Green from Lewis Whitney, August 14, 1929, regarding poultry breeding at Round Hills (9558).

Thereupon counsel for Florida gave in evidence the following Statutes of the State of Texas appearing in the compilation entitled "Vernon's Texas Statutes, 1936, Centennial Edition":

Article No. 2958, Subject: Residence;
Article No. 2959, Subject: Liable to poll tax;
Article No. 2960, Subject: Exempt from poll tax;
Article No. 7145, Subject: All property taxed;
Article No. 7146, Subject: Real property;
Article No. 7147, Subject: Personal property;
Article No. 7149, Subject: Definition of terms;
Article No. 7151, Subject: When to be rendered;
Article No. 7152, Subject: How rendered;
Article No. 7153, Subject: Where rendered;
Article No. 7161, Subject: Sworn list;
Article No. 7162, Subject: Requisites; and
Article No. 7189, Subject: When assessments made (9562).

Thereupon counsel for Massachusetts gave in evidence the following Statutes of the State of Texas from Vernon's Texas, 1936, Centennial Edition:

Art. 6278. (6424) (4368)—Officers to keep offices in Texas.

Thereupon counsel for Texas gave in evidence the following Statutes of the State of Texas, in addition to those theretofore offered:

Article 2955: Qualifications for Voting;
Article 2955a: Qualifications for Voting for Bond Issues, Lending Credit, Expending Money, or Assuming Debt;
Article 2955b: Certified List of Taxpayers;
Article 2956: Absentee Voting; and
Article 2973: Proof of Residence (9578).

Thereupon counsel for Massachusetts gave in evidence from the Massachusetts General Acts of 1916, Chapter 269, a part of Section 25—Persons subject to taxes imposed by this Chapter; Returns by certain individuals or fiduciaries (9590-1), and also the following portions of the Constitution and Statutes of the State of Florida:

Articles IX, Section 11, of the Constitution of Florida, adopted at the general election in 1924;

The Compiled General Laws of 1927, the State of Florida, Section 893, dealing with subjects of taxation;

Compiled General Laws of the State of Florida, 1927, Section 896, dealing with personal property; in that section personal property is defined;

Compiled General Laws of the State of Florida, 1927, Section 907, dealing with taxation of stock; shares in banks;

Compiled General Laws of 1927, Section 909, the heading being: Owners of water crafts to list same for assessment;

Compiled General Laws of 1927, Section 917, entitled: Returning property for taxation; failure to make return;

Permanent Supplement to the Compiled General Laws, 1936, Section 1041, Paragraph 2, defining the terms: Intangible personal property, and, taxpayers;

Permanent Supplement to Compiled General Laws, 1936, Section 1041, Paragraph 3, dealing with Division of intangible personal property into classes;

Permanent Supplement to Compiled General Laws of 1927, Supplement of 1936, Section 1041, Paragraph 5, dealing with assessment of property;

Permanent Supplement to Compiled General Laws, of 1927, the Permanent Supplement of 1936, Section 1041, Paragraph 6, entitled: Bases of assessment;

Permanent Supplement, 1936 to the Compiled General Laws of 1927, Section 1041, Paragraph 7, entitled: Returns of property for Taxation;

Article X, Section 7, of the Constitution of Florida, as adopted at the general election of 1934, dealing with the increase of the homestead exemption from $500 to $5,000 for purposes of taxation;

Section 3, Chapter 17060 of the Acts of 1935, as to the construction of the words: resident, residence, and permanent residence;

1936 Permanent Supplement to the Complied General Laws of 1927, Section 897, Paragraph 4, dealing with the definition of the words: resident, residence, permanent residence, and words of like import;

Compiled General Laws of 1927, Section 1281, dealing with the subject of: Application for registration on blank furnished, dealing with motor vehicles;

Compiled General Laws of 1927, Section 1283, headed: Certificate and number of registration, dealing with motor vehicles, and so forth;

Compiled General Laws of 1927, Section 1285, dealing with registration fee on motorcycles; motorcycle side car, passenger vehicle, motor trucks, trailer, semi-trailers, and so forth; and

Permanent Supplement, Section 1285, Subsection 17, dealing with the registration fee on motor vehicles, and so forth (9602-3-4).

Counsel for Massachusetts also gave in evidence the following Statutes, of the State of New York:

Section 351 of the New York Tax Law, passed in 1919, as amended (9623).

The Master also directed the insertion in the Record of the letter from Edward O. Proctor, Assistant Attorney General of the Commonwealth of Massachusetts, dated May 4, 1938, as an offer of the Statutes therein referred to in addition to the laws formally offered at the various hearings (9625).

The Statutes of the various States so given in evidence are set forth in the Record at pages 9561 to 9685.

Evidence for Respondent Wilks

Wilbur K. Potter, recalled as a witness for the Estate of Edward H. R. Green, testified that the Westminster Company was organized in 1911 to take over the affairs of Mrs. Hetty Green, so that if anything happened to her they would be able to handle her affairs and properties in corporate form; within a year or two after 1914, her assets were gradually taken over by this Company; at the time of her death, 40% or 50% of her real estate was held by that Company (7845-6); all of the stock of this Company, except Directors' shares, had been issued to Mrs. Hetty Green and Colonel Green; under her Will, with the exception of certain bequests, her estate was left in trust for ten years and the stock of the Westminster Company was held by her estate in the trust; after her death, the activities of the Westminster Company were gradually decreased and it was finally liquidated at the end of the ten-year period and dissolved in 1928; prior to that time it had been inactive (7847-8); the Windham Realization Company was incor-

porated in 1912 to take care of foreclosures of real estate mortgages; Mrs. Hetty Green owned mortgages and ninety-nine year leases aggregating several millions of dollars and these mortgages were handled by the Realization Company; a large number had been disposed of prior to the ten-year period; the stock of the Realization Company was owned by Mrs. Hetty Green, with the exception of the Directors' qualifying shares, and became one of the assets of her estate; by 1926 or 1927, practically all of the leases and the real estate mortgages had been sold or disposed of, with the exception of a few mortgages in Chicago which were retained as good investment until they were gradually reduced (7849-51); at the time of Green's death in 1936, approximately $750,000 to $1,000,000 in mortgages were still owned by his estate and the Green Estate, Incorporated (7851); at the time of the expiration of the trust in 1927, the Windham Realization Company was not very active; for several years it has not had but one mortgage, in the center of New York City, for about $24,000 and the collection of interest on that has been the sole income of the Windham Company (7852); this Company is still in existence and is kept so that they will have a corporation in case it is necessary to go into litigation for any reason; the Company does not hold annual stockholders meetings and has not had one for several years—eight or ten years (7853); up to the time of its dissolution the Westminster Company held stockholders and directors' meetings (7854); Green did not attend any directors' meetings of the Windham Realization Company between 1927 and the date of his death (7854); Green Estate, Incorporated began doing business January 5, 1927; it was organized to keep the Estate of Hetty Green intact, in corporate form; the ownership of the stock was one-half in Colonel Green and one-half in Mrs. Wilks; immediately after the incorporation of the Company certain assets of Mrs. Hetty Green's Estate were transferred to the Company; these assets consisted of practically everything except Municipal, State and Government non-taxable bonds and cash; there was an annual meeting of the stockholders of this Company and directors' meeting as required—two or three a year (7855); the last meeting attended by Colonel Green was in December, 1932, at the Sherry-Netherland Hotel; no real estate was turned over to the Green Estate, Incorporated; the assets consisted of Industrial and Railroad bonds, stocks and cash; its activity

was to collect interest on bonds, dividends and interest on mortgages; there were quarterly payments of interest to the two parties interested and at the annual meeting a dividend was declared; the annual meetings of the directors were short, taking about fifteen minutes each (7857-8); there was no extended discussions, their only problems were good investments and suitable reinvestments; at the time of the incorporation of Green Estate, Incorporated, the bonds and stock of the Texas Midland Railroad were placed among the assets of that Company and when sold in 1928 the cash derived, approximately $2,025,000, came to that Corporation (7858); Colonel Green was the final arbiter in the determination of all investments—offers were made by brokers and a memorandum was submitted to him by witness wherever he happened to be, and he would either take it or say nothing; if they heard nothing from him they knew he was not interested (7859); in New York, they would have a conference with Green and if he was away they would send him a memorandum; the securities were purchased through the brokers and delivered to the bank against payment and a voucher drawn for Green's signature (7860); Green was not at the office, 111 Broadway, after 1921; in the twenty years between his death and his mother's death, Green spent a little more than his total income for that period in the purchase of jewels, stamps, coins, living expenses, Federal income taxes, etc. (7862); he never paid any State income taxes; at his mother's death, his personal estate was approximately $600,000 and during this twenty-year period the investments were largely made from his own capital maturities from time to time (7863); before Mrs. Hetty Green's death, during the ten-year period and up to Colonel Green's death, large cash balances were maintained at all times in the Seaboard Bank and its successors—the Equitable and Chase of New York City—and certificates of deposits were purchased in certain Trust Companies; after the Hetty Green Trust started, most of the investments were in tax-free Municipals, States, Cities, Counties, Towns and School Districts and the Federal Government bonds (7865); in the last ten years of his life, Colonel Green never asked for an inventory of his assets and so far as witness knows did not have one; he was kept advised monthly of the cash position after they had received the bank statements and they sent him a letter of information of the type of Wilks Ex. No. 3 (7867); the West-

minster Company was incorporated in New Jersey; the Windham Realization Company in New York and the Green Estate, Incorporated in Delaware (7869); no one else was interested in these Companies except Hetty Green's Estate, Colonel Green and Mrs. Wilks individually and they did no business of making investments for any one else except these three parties (7869); no control was exercised by Colonel Green or any member of the Green family in any corporation in which they had investments other than these three Companies; in none of the Companies in which they had a large stock interest as investment was there a controlling interest (7870); Green did not take an active part in business affairs in the last fifteen or twenty years of his life; the main work of the office, 111 Broadway, was looking after the income from all investments of all parties interested in the Hetty Green fortune, keeping the books of receipts and disbursements, primarily for tax purposes—a large proportion of its work was accounting (7871-2).

On cross-examination by counsel for New York, witness testified that by investments he meant stocks, bonds, etc., that would produce an income; money that Green spent for stamps, coins or jewelry they had no control over; from their standpoint, it was a personal expense, the money spent on Star Island and Round Hills would not be considered as spent from his income; the cost of the properties was set up on their books as an investment but the running expenses were personal (7874).

On cross-examination by counsel for Florida, witness said that when he first became acquainted with Green's affairs in 1914, the Colonel was an active business man and this continued until his mother's death and afterwards up to about 1921; then his personal activities in business more or less ceased and he became more interested in other things (7876-7); that he had not built himself a home anywhere in New York City or New York State and was living in rented quarters there and so continued until he died (7878); that he started to build at Round Hills as his business activities began to cease; that the title to that real estate upon which the house at Round Hills was built was in his mother's estate, in which he had a half interest with his sister, and he then extended his energy by acquiring several boats and his place in Florida (7879); the land upon which the Star Island was built was owned by Green exclusively (7880); after acquiring these two places, his business activities ceased (7883).

On redirect examination by counsel for Mrs. Wilks, he testified that prior to 1921 Green spent on an average of not more than four or five hours a week at the office—would come in, spend a half an hour and they would not see him again that day; during this period the assets being managed ran into millions of dollars (7886-7).

After the conclusion of the hearings, at the request of all parties, counsel for Texas, Massachusetts and Florida submitted and the Master directed to be filed affidavits of the witness Wilbur K. Potter, more clearly setting forth the assets within said jurisdictions, respectively, at the time of Colonel Green's death (R. following page 9800).

New York Evidence in Rebuttal

Victor C. Strandell, of Miami, Florida, testified that he was foreman of the Railway Express Agency and knew Green for several years while he had dealings with his office; in 1934, he thinks it was, he had a conversation with Green in front of his office and asked him when he was going back home and Green replied, laughingly, "What do you mean by going back home; I am home" and witness said, "What time of the year are you going back" and he replied, "I am going back home; I am going back when the weather gets too warm; the reason I laughed was because your agent up in Massachusetts asked me the same identical question last year, last Fall; he asked me, Colonel, when are you going home—back home and I told him the same thing I am going to tell you—I told him whenever your weather gets so that I cannot stand it I am going back to my home in Florida" (9687-9).

Texas Evidence in Rebuttal

Thereupon counsel for Texas gave in evidence Tex. Ex. No. 405, a certificate by the Comptroller of Public Accounts of the State of Texas based upon his examination of the records of Dallas and Kaufman Counties with reference to assessments in the name of E. H. R. Green, Mrs. Mabel H. Green and Green Estate, Incorporated for 1936 (9691); also Tex. Ex. No. 406, photostat copy of State and County Tax Receipt for 1931 on real and personal property assessed against E. H. R. Green (9692); also Tex. Ex. No. 407, a similar receipt for 1935 (9696).

Massachusetts Evidence in Rebuttal

EARL YEATON, of Clifton, New Jersey, testified that he was in the sales department of the Shaw Furniture Company, East Cambridge, Massachusetts, with offices in New York City, manufacturers of custom-made furniture; he has examined and brought with him the records of said Company, including pictures of the desk manufactured by his Company January 4, 1926, and delivered to the Express Company August 31st of that year for transportation to Colonel Green at Star Island; that he has recently examined the desk in Colonel Green's chambers and found their tag, V-83, their order number, thereon; that the desk is walnut; that they made all of the furniture for the Round Hills farm and this desk is a copy of the desk made for Round Hills (9700-4) (counsel for Massachusetts stated that the desk described by witness was the one shown in the Star Island home as Colonel Green's mother desk); that the desk was the same except there was an addition to the base to increase its height (9705).

Counsel for Massachusetts gave in evidence Ex. No. 464, the original order for the desk and Ex. No. 465, a photograph thereof (9706-13).

On cross-examination by counsel for Florida, the witness testified that his Company made all of the furniture for the Star Island house; it was as good as money could buy; it was all shipped from the factory at Cambridge, Massachusetts, to Star Island, consigned to Green in 1926 (9714-15.)

On cross-examination by counsel for New York, he testified that he could not say whether the desk was an exact replica of the desk at Round Hills but was based upon it; the furniture was ordered by L. Barth and Company, the decorators.

On redirect examination by counsel for Massachusetts, the witness examined the photograph attached to a letter of F. Lowry Wall, June 29, 1933, and compared the desk there represented with Mass. Ex. No. 465 and said there was nothing in the picture of the damaged desk to identify it as the same article of furniture (9727). Said letter was thereupon given in evidence as Mass. Ex. No. 466 and the photograph as Mass. Ex. No. 465 (9718-19).

HARVEY MANSFIELD, of Miami Beach, Florida, testified that he was Executive Secretary and Treasurer of the Beach Club, Miami Beach; that he had seen Green at but not in the Club several times in his car; that he has examined the photographs, Fla. Exs. Nos. 151 and 152 and that the person in the straw hat in the cabana he could not recognize as Colonel Green (9725-7).

Counsel for Massachusetts then gave in evidence a statement of the Atlantic Coast Line Railroad Company, January 28, 1926, to Green, Waldorf-Astoria, New York, for transportation in special car and the same was given in evidence as Mass. Ex. No. 468 (9730); also as Ex. No. 469, photograph of newspaper article and photographs in connection therewith taken from The Morning Mercury, of New Bedford, Massachusetts, Thursday, July 22, 1926, regarding Green's speech at the dedication of the "Charles W. Morgan" (9734); also as Mass. Ex. No. 470, a photostat copy of article and photographs from The Evening Standard, New Bedford, Massachusetts, Thursday, July 22, 1926, relating to the same occasion (9736).

Counsel for New York thereupon gave in evidence N. Y. Ex. No. 237, a letter from Green's secretary, Star Island, April 1, 1933, addressed to J. N. Lummus, Jr., Tax Assessor of Miami, Florida, in which he says:

"Colonel Green has been further advised that although his legal residence is in another state, the intangible tax on the stock he owns in the First National Bank of Miami and the Miami Beach First National Bank is proper and legal. Therefore, I beg to enclose herewith return covering 100 shares of each of these banks, the value placed thereon being that agreed upon between the respective banks and your office" (9740).

and Lummus' acknowledgment of April 4, 1933, as N. Y. Ex. No. 238 (9741).

Thereupon certain extracts from Texas Ex. No. 6, showing Green's movements in 1896-1898 were copied in the Record at pages 9742-9783.

And thereupon counsel for all parties announced their evidence closed and stated that they did not insist upon any of their exceptions to rulings made by the Master in the course of the various hearings (9784).

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1938

No. 11, ORIGINAL

THE STATE OF TEXAS, Complainant,
against
THE STATE OF FLORIDA, THE COMMONWEALTH OF MASSACHUSETTS, THE STATE OF NEW YORK, MABEL HARLOW GREEN, AND HETTY SYLVIA ANN HOWLAND GREEN WILKS, Respondents

INDICES TO DIGEST AND TRANSCRIPT OF REPORT OF PROCEEDINGS BEFORE

JOHN SPALDING FLANNERY, SPECIAL MASTER

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Lawrence William Wells	2	...	...	7	...	6	...	5	...	...	...	...
Thomas E. Corley	8*	...	...	16	...	8	...	8	...	...	...	...
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	17*					15		16				16
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Frank H. Butler	85	...	...	...	...	...	...	...	...	...	...	...
Cary D. Landis	86	...	...	...	...	...	...	...	...	...	...	...
Thomas J. McCann	88	...	...	...	...	...	...	...	...	...	...	...
Harold Winslow	88	...	...	...	...	88	...	...	...	...	...	...
G. LeRoy Bradford	89	...	...	...	...	...	...	...	...	...	...	...
John Newington	90	...	...	...	...	89	...	89	...	...	...	...
Elaine M. Chinn	94	...	...	...	...	90	...	91	...	...	...	...
George Joyce	94	...	...	...	...	...	...	...	...	...	...	...
Joseph Epstein	95	...	...	95	...	...	...	...	...	...	...	...
Luke Smith	96	...	...	95	...	...	...	...	...	...	...	...
F. Lowry Wall	105	...	...	...	...	...	...	...	...	...	...	...
Dr. Charles Frederick Roche	106	...	...	106	...	106	...	105	...	...	...	...
Charlotte E. French	108	...	...	107	...	107	...	108	...	...	...	...
				109	...	109	...	109	...	...	...	...
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* Redirect examination.

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	Direct	Cross	Direct	Cross	Direct	Cross	Direct	Cross	Direct	Cross	Direct	Cross
Boothe Colwell Davis, Jr	...	110	110	...	...	...	...	110	...	...	...	...
Ernestina Holcinger	...	112	110	...	...	113	...	113	...	115	...	...
Leon R. Morford	...	116	115*					115				
			115	...	...	116	...	116	...	...	...	...
August Holcinger	...	116	116*									
John O. Green	...	117	116	...	...	117	...	...	...	...	...	...
George E. Ashby	...	118	117	...	...	...	...	118	...	...	...	...
Wilbur K. Potter	...	137	118*									
		142	118	154	...	138	...	118	...	...	...	...
		155				139		149	...	...	...	...
						141		149				
Ernest Temple Love	...	158	157	...	...	155	...	151	...	...	...	...
Lawrence Sturgis	...	...	158*					158				
William C. Cox	...	...	158	...	...	159	...	...	...	...	...	...
Saul Dubov	...	...	159	...	...	...	...	...	...	...	...	...
L. M. De Vausney	...	...	159	...	...	...	...	...	...	...	...	...
Henry Stewart Price	...	161	160	...	...	161	...	161	...	...	...	...
	...	...	161	...	...	163	...	162	...	...	...	...
Dr. Henry S. Pascal			164*									
Charles J. Wallace	...	166	164	...	...	167	...	166	...	167	...	...
Henry F. Woelfle	...	...	168	...	...	...	...	...	...	...	...	...
	...	168	168	...	...	169	...	169	...	...	...	...
William K. Cleverley			169*						...	...	...	...
Louis P. Lengeman	...	170	169	...	...	170	...	170	...	170	...	...
Lawson Purdy	...	...	171	...	...	171	...	...	...	...	...	...
William R. Wiener	...	...	171	...	...	...	...	...	...	...	...	...
James P. Flynn	...	...	171	...	...	...	...	...	...	...	...	...
	...	...	172	...	...	...	...	...	...	...	...	...

Thomas T. Sturgis, Jr.	...	...	172	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Peter John Anton Van der Putten	...	...	172	...	...	174	...	173	...	174	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Ralph H. Howes	...	175	174	...	...	176	...	175	...	176	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
			177*																						
Thomas W. Chrystie	...	...	179	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
John W. Schlabitz	...	...	179	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Anne Owens	...	...	180	...	...	181	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
William B. Hogan	...	...	194	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
William C. Phillips	...	...	194	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
William H. Tripp	...	195	194	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Clifton W. Bartlett	...	...	195	...	...	195	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Charles A. Parker	...	...	195	...	...	...	...	196	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
John M. Bullard	...	...	196	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Hubert D. Bliss	...	198	198	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
			199*																						
Harry A. Neyland	...	...	199	...	...	...	...	200	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Edward Ardolino	...	...	200	...	...	201	...	201	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Frederick J. Hartwig	...	...	201	...	...	203	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...

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Rezia (Mrs. Bondurant N.) Jarvis	...	203	...	204	203	...	...	204	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Mary Stafford	...	211	...	210	206	...	...	211	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
		214		213	214*																				
Walter H. Marshall	...	245	...	251	240	...	...	247	...	253	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
		256			254*			256																	
Gerda Augusta Berglund (nee Larsen)	...	262	...	263	257	...	...	264	...	263	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
					264*																				
Wilbur K. Potter	...	...	...	...	264	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
					296																				
T. W. Chrystie	...	...	...	268	268	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Oscar Carlson	...	269	...	...	268	...	...	270	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Eileen Stephenson	...	295	...	296	294	...	...	296	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
					296*																				
Raymond McLeod	...	...	...	297	296	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
					298*																				

* Redirect examination.

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	Direct	Cross	Direct	Cross	Direct	Cross	Direct	Cross	Direct	Cross	Direct	Cross
Samuel S. Peckham	...	298	...	...	298	...	...	...	...	...	...	...
William M. Emery					298*							
Charles Sumner Ashley	...	301	...	301	298	...	...	301	...	302	...	...
Howard E. Odiorne	...	303	...	303	302	...	...	303	...	...	...	...
Zabina B. Davis	...	304	...	305	303	...	...	305	...	...	...	...
	...	307	...	308	305	...	...	308	...	...	...	...
Yvonne A. Jette								308				
J. Edward Harris	...	309	...	...	308	...	...	...	...	309	...	...
Harry A. Neyland	...	311	...	312	309	...	...	311	...	...	...	...
	...	315	...	317	312	...	...	315	...	317	...	...
Ruth L. Briggs								318				
Harry R. Bennett	...	319	...	...	318	...	...	...	...	...	...	...
Edward L. Bowles	...	320	...	...	319	...	...	320	...	...	...	...
Herbert D. Hill	...	324	...	325	321	...	...	324	...	...	...	...
Frank C. Taylor	...	...	...	...	325	...	...	...	...	...	...	...
John M. Bullard	...	328	...	...	328	...	...	328	...	327	...	...
Nick Natsis	...	329	...	...	329	...	...	...	...	...	...	...
Maurice J. Sullivan	...	...	...	330	330	...	...	330	...	...	...	...
James A. Dixon	...	336	...	336	333	...	...	336	...	...	...	...
Charles W. Keyes	...	...	...	...	336	...	...	337	...	...	...	...
	...	...	...	...	337	...	...	337	...	...	...	...

Henry F. Long	...	339	...	339	...	339	338	...	...	...	...	...
Seth T. Cole	...	...	...	...	...	340	340	...	...	...	...	...
Thomas Tullouch	...	...	...	...	...	341	340	...	...	341	...	...
William C. Vander	...	...	...	...	...	...	341	...	...	...	...	...
John McKie	...	...	...	345	...	345	344	...	...	...	...	...
Charlotte E. French	...	...	...	...	...	...	345	...	...	...	...	...
Frank M. Deigaard	...	...	...	...	...	346	346	...	...	...	...	...
							346*					
William P. Baird	...	...	...	...	...	...	346	...	...	...	...	...
Richard Plummer	...	...	...	...	...	...	347	...	...	...	...	...
Mrs. Charlotte Donn	...	...	...	348	...	348	347	...	...	348	...	...
							348*					
James Donn	...	...	...	...	...	351	348	...	...	...	...	...
							351*					
Marguerite H. Allen	...	...	...	...	...	...	351	...	...	...	...	...
E. G. Sewell	...	352	...	...	...	352	352	...	...	...	...	...
Eugene Franklin Holland	...	...	...	...	...	...	353	...	...	...	...	...
Robert A. Gideon	...	...	...	...	...	...	353	...	...	...	...	...
Miss Jefferson Bell	...	...	...	...	...	...	354	...	...	...	...	...
George Rodearmel	...	...	...	...	...	...	354	...	...	...	...	...
Lincoln Brown, Jr	...	...	...	356	...	...	355	...	...	...	...	...
Edgar Louis Keuling	...	...	...	...	...	...	356	...	...	...	...	...
Joseph A. Richter	...	...	...	...	...	...	357	...	...	...	...	...
Elisha A. King	...	...	...	358	...	358	358	...	...	...	...	...
Fleming G. Railey	...	359	...	...	...	359	359	...	...	...	...	...
John Klein	...	...	...	...	...	...	359	...	...	...	...	...
Henry E. Mangels	...	...	...	...	...	...	360	...	...	...	...	...

* Redirect examination.

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Witness	Texas		New York		Mass.		Florida		Mrs. Wilks		Mrs. Green	
	Direct	Cross	Direct	Cross	Direct	Cross	Direct	Cross	Direct	Cross	Direct	Cross
S. Grover Morrow	...	...	...	...	...	...	361	...	...	...	...	...
Lewis Forrester	...	...	...	...	...	362	361	...	...	...	...	...
Agnes Mollie Purnell	...	...	...	...	...	...	363	...	...	...	...	...
Joseph T. Rambler	...	...	...	365	...	365	364	...	...	...	...	...
Irene (Mrs. Lincoln) Brown	...	...	...	...	...	...	366	...	...	...	...	...
Charlie W. Pierce	...	...	...	...	...	...	367	...	...	...	...	...
Charles E. Brooks	...	...	...	...	...	...	367	...	...	...	...	...
John E. Herrick	...	...	...	...	...	...	368	...	...	...	...	...
R. V. Waters	...	...	...	...	...	...	368	...	...	...	...	...
Tom Norfleet	...	...	...	...	...	...	371	...	...	...	...	...
S. J. Tucker	...	...	...	...	...	372	371	...	...	...	...	...
L. G. Fields	...	...	...	373	...	373	373	...	...	373	...	...
M. L. Watson	...	...	...	...	...	...	374	...	...	...	...	...
Helen Graber	...	375	...	375	...	375	374	...	...	375	...	...
Alfred Hess	...	378	...	376 377	...	...	376 378*	...	...	...	...	...
C. H. Reeder	...	380	...	...	...	380	379 380*	...	...	380	...	...
John H. Levi	...	382	...	382	...	382	381	...	...	...	...	...
Dr. John Barrett	...	...	...	...	...	...	385	...	...	...	...	...
A. J. Cleary	...	...	...	395	...	...	394	...	...	...	...	...
Harry Neyland	...	...	...	...	...	397	395*	...	...	...	...	...
							395	...	...	...	...	...
Wilks Witness												
Wilbur K. Potter	...	...	...	404	...	...	...	404	401 405*	...	...	...
New York Witness in Rebuttal												
Victor C. Strandell	...	...	405	...	...	...	...	...	...	...	...	...
Massachusetts Witnesses in Rebuttal												
Earl Yeaton	...	...	...	406	406	...	...	406	...	...	...	...
Harvey Mansfield	...	...	...	...	406* 407	...	...	...	...	...	...	...

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	Direct	Cross	Direct	Cross	Direct	Cross	Direct	Cross	Direct	Cross
Adair, Garland	1014	....	....	....	....	....	....	....	....	....
Allen, Marguerite H.	....	....	....	....	....	....	8241	....	....	....
Ardolino, Edward	....	....	7797	....	....	7801	8252	7805	....	....
Ashby, George E.	....	3036	7806* 3031	....	....	3037	....	3036	....	....
Ashley, Charles S.	....	6467	3037*	6491	6455	....	....	6482	....	....
Baird, William P.	....	....	....	....	....	....	8101	....	....	....
Barnett, Raymond	995	....	....	....	....	....	....	....	....	....
Barrett, John	....	9349	....	9345	....	9351	9332	....	....	....
				9356		9356				
				9359						
Bartlett, Clifton W.	....	....	4808	....	....	4810	....	....	....	....
Bell, Jefferson	....	8346	....	....	....	8347	8337	....	....	....
Bennett, Harry R.	....	6791	....	6814	6780	....	8351*	6803	....	6823
		6820								
Berglund, Gerda A.	....	5742	....	5766	5664	....	....	5766	....	5769
		5782			5778*			5782		
Bliss, Hubert D.	....	7749	7740	....	....	....	....	7775	....	....
			7779*							

* Redirect examination.

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	Direct	Cross	Direct	Cross	Direct	Cross	Direct	Cross	Direct	Cross
Bowles, Edward L.	....	6849	....	....	6824	....	....	6853	....	....
Bradford, G. LeRoy	2732	....	....	....	....	2734	....	2735	....	....
Briggs, Ruth L.	....	6771	....	....	6760	....	....	....	....	....
Brooks, Charles R.	....	8691	....	....	....	....	8684	....	....	....
Brown, Mrs. Irene	....	8663	....	8662	....	8665	8654	....	....	....
						8700	8669*			
							8694			
Brown, Lincoln	....	....	....	8389	....	....	8377	....	....	....
Buie, Dr. N. B.	826	....	....	962	....	921	....	889	....	977**
	980*			989				985		
Bullard, John M.	....	7035	4825	7044	6993	....	....	7041	....	....
					7046*					
Butler, Frank H.	2661	....	2649	....	....	2667	....	2649	....	2671
	2669									
	2670									
	2703									
Carlson, Oscar	....	5764	....	5884	5857	....	....	5872	....	5886
		5888		5887				5887		
Chinn, Elaine M.	2788	....	....	....	....	....	....	....	....	....
Chrystie, Thomas W.	2532	....	4406	5855	5853	2553	....	2536	....	....
	2554					2565				
	2567					2568				
Cleary, A. J.	....	9480	....	9476	....	....	9470	....	....	....
				9479			9478*			
Cleverley, William K.	....	4260	4243	....	....	4265	....	4262	....	4266
			4268*							
Cole, Seth T.	2699	....	....	....	....	7088	7085	....	....	....
	2708									
Corley, Thomas E.	240	....	....	371	....	316	....	296	....	400**
	408*			407		411	....	402		
				415				416		

Cox, William C.	....	3658	3650	....	....	....	....	....	....	....
Dallas, John G.	2455	....	....	....	....	....	....	2457	....	....
	2460							2459		
Davis, *Boothe C., Jr.*	....	*2909*	*2901*	....	....	*2910*	....	2909	....	....
Davis, Zabina B.	....	6562	....	6582	6510	....	....	6573	....	6589
Deigaard, Frank N.	....	8100	....	8093	....	8093	8084	6593	....	8097
DeVausney, L. M.	....	3706	3687	8099	....	8099	8099*	....	....	
Dixon, James A.	....	3718	....	....	....	....	....	3716	....	....
Donn, Mrs. Charlotte	....	....	....	7682	7668	....	....	7680	....	....
		8143	....	7684				7683		
		8153		8140	....	8145	8121	....	....	8182
		8185		8150		8150	8149*			
				8173		8152	8151*			
				8184		8174	8152			
							8166			
							8186*			
Donn, James	....	8217	....	8214	....	8219	8190	....	....	....
Dubov, Saul	....	8228		8227		8232	8230*			
		3668	3659	....	....	3668	....	3673	....	....
			3671*					3680		
			3680							
Duke, Llewellyn B.	2697	....	....	....	....	....	....	....	....	....
Edwards, S. G.	1380	....	....	1395	....	1385	....	1384	....	1404**
	1401*			1405		1407				
Emery, William M.	....	6416	....	6437	6379	....	....	6431	....	6447
Epstein, Joseph	2807	....	....	....	....	....	....	2811	....	2821
Fields, L. G.	....	....	....	8850	....	8852	8845	....	....	8853
Flynn, James P.	....	....	4301	....	....	....	....	....	....	....
Forrester, Lewis	....	8500	....	....	....	8497	8491	....	....	....
						8503	8504*			
French, Charlotte E.	7366	8079	....	7408	....	7411	8070	7413	....	7428
	7429*			7428		7423	8082*	7433		8080
				7433		8081				
				8082						

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Galbraith, Harry	1730	....	....	1750	....	1742	....	1739	....	....
Gideon, Robert A.	....	....	....	....	....	1753	8329	....	....	....
Graber, Helen	....	8873	....	8873	....	8877	8862	....	....	8881
Green, John O.	....	3022	3016	8887	....	....	....	3026	....	....
Harris, J. Edward	....	6639	3029*	....	6625	....	....	6643	....	6649
Hartwig, Frederick J.	....	7843	7817	....	....	7834	....	6649	....	....
Herrick, John E.	....	8717	7840*	....	....	7843	....	....	....	....
Hess, Alfred	....	8904	7842*	....	....	....	8713	....	....	....
		8906	....	8895	....	8905	8890	....	....	8928
		8913		8911		8908	8909			
		8928		8919			8929			
Hill, Herbert D.	....	6906	....	....	6886	....	....	6951	....	6952
Hogan, William B.	....	....	4488	....	....	....	....	6952	....	....
Holcinger, August	....	3009	3006	....	....	3012	....	3012	....	....
Holcinger, Ernestina	....	2932	3015*	....	....	2959	....	2939	....	....
			2913	....				2979		
Holland, Eugene Franklin	....	8318	2980*	8318	....	8320	8309	....	....	....
Howes, Ralph H.	....	4367	4488	....	....	8324	8323*	....	....	....
			4356	....		4374	....	4369	....	....
Jarvis, Mrs. B. W.	....	1789	4376*	1796	1782	4377	....	1795	....	....
		1797	4388	....		....	....		....	....

Jette, Yvonne A.	....	6619	....	....	6613	....	....	....	....	6623
Johnson, A. B.	1007	....	....	1014	6624*	....	....	....	....	....
Joyce, George	2794	....	....	2800	....	....	....	....	....	....
Kearns, John	....	....	4315	....	....	....	....	4317	....	....
Keuling, Edgar Louis	....	8403	....	....	....	8406	8392	....	....	....
Keyes, Charles W.	....	....	....	....	7867	....	8407*	7692	....	....
Kiest, Edwin J.	1061	....	....	1268	....	1194	....	1145	....	1299**
King, Elisha A.	1292*	....	....	....	....	8435	8429	....	....	....
Klein, John	....	8452	....	8452	....	8453	8434 8436* 8449	....	....	....
Landis, Cary D.	2705	....	....	....	....	....	....	....	....	....
Larsen, Gerta (see Berglund)	....	....	....	....	....	....	....	....	....	....
Lengeman, Louis P.	....	....	4277	....	....	4280	....	4279	....	....
Levi, John H.	....	9032	....	9023	....	9038	9013	....	....	9046
Long, Henry F.	2627	7076	....	9044 2632	....	2637	7058	2639	....	2631
	2690			2637 2641		2638 7078				2638
Love, Ernest Temple	....	3626	3587	7080	....	3631	....	3629	....	....
Mangels, Henry E.	....	8459	3632*	....	....	....	8455	3633	....	....
Manicoff, Jacob	2642	....	....	2653	....	....	....	....	....	....
Mansfield, Harvey	....	....	....	2656 9728	9725	....	....	9727	....	....
Marshall, Walter H.	....	5423	....	5537	5334	....	....	5454	....	5591
		5636 5641		5651	5606* 5641*			5643		5651
Massengill, F. I., Jr.	1609	....	....	1627	....	1629	....	1625	....	....
McCann, Thomas J.	1628* 2715	....	....	....	....	2719	....	2720	....	....

* Redirect examination.

** This examination in behalf of Mrs. Green.

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McDonald, William Madison	418	....	....	549	....	....	....	503	....	524
	551*			567				567		558
	564*									568**
McKay, F. B.	570	....	....	771	....	713	....	672	....	788**
McKie, John	795*			810				808		
	....	....	....	8061	....	8061	8053	....	....	....
				8066			8066*			
McLeod, Raymond							8067*			
	....	....	....	6370	6342	....	....	6369	....	....
				6371	6371*			6560		
Morford, Leon R.					6559					
	....	2993	2990	....	....	3000	....	2995	....	....
Morrow, Ernest Ford			3003							
Morrow, S. Grover	12	....	....	31	....	21	....	20	....	....
Natsis, Nick	....	8488	....	8487	....	8488	8478	....	....	....
	....	7458	....	7457	7452	....	....	7468	....	7466
Newington, John		7472		7471						
	2738	....	....	....	....	2753	....	2760	....	....
Neyland, Harry A.	....	6685	7782	6733	6651	2769	9482	6689	....	6743
		7792			6749*	7789	9520	6755		
		9513				9535	9527	7790		
		9525						7792		
		9541								
Norfleet, Tom	....	8832	....	8831	....	8833	8829	....	....	....
Odiorne, Howard E.	....	....	....	6508	6495	....	....	6507	....	....
O'Reilly, William M.	....	4816	4385	....	....	4814	....	....	....	....
			4813							
Owens, Anne			4815*							
	....	....	4431	....	....	4442	....	4447	....	....

Parker, Charles A.	....	....	4818	....	....	4823	....	4823	....	....
Pascal, Dr. Henry S.	....	4159	4126	....	....	4167	....	4162	....	4174
Peckham, Samuel S.	....	6375	4179*	6377	6372	4183	....	4182	....	4185
Phillips, William C.	....	....	4796	....	....	....	....	....	....	....
Pierce, Charlie W.	....	....	....	8681	....	....	8672	....	....	....
Plummer, Richard	....	....	....	8115	....	8117	8107	....	....	8681
Potter, Wilbur K.	2480	3363	3041	8120 2512	5804	3364	....	3457	7845	....
	2523	3545	3563*	2606	6333	3556		3556	7884*	
	2600	5845	3581*	2624	7439	3580		3563		
	2608		4269	5807				3573		
	2686		4274	7165				5807		
	7164		4293	7444				7441		
			4297	7872				7885		
								7887		
Price, Henry Stewart	....	3729	3721	....	....	3748	....	3731	....	....
		3789	3783*			3788		3793		
			3793							
			3794*							
Purdy, Lawson	....	....	4283	....	....	....	....	....	....	....
Purnell, Agnes Mollie	....	....	....	8597	....	8598	8534	....	....	....
				8598						
Railey, Fleming G.	....	8444	....	8447	....	8445	8438	....	....	8446
							8448*			8447
Rambler, Joseph T.	....	....	....	8648	....	8648	8600	....	....	....
Reeder, C. H.	....	8982	....	....	....	8979	8973	....	....	8981
							8980*			
							8983*			
Richter, Joseph A.	....	8425	....	....	....	8426	8410	....	....	....
Roche, Dr. Charles Frederick	7315	....	....	7330	....	7349	....	7354	....	....
Rodearmel, George	....	8361	....	....	....	8367	8354	....	....	....

* Redirect examination.

** This examination in behalf of Mrs. Green.

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	1314*									
Schlabitz, John W.	....	....	4423	....	....	....	....	....	....	....
Sewell, E. G.	....	8276	....	8271	....	8293	8256	....	....	8299
Sheppard, George H.	2673	....	....	2675	....	....	....	....	....	2679
Smith, Luke	2881	....	....	....	....	2885	....	....	....	....
	2887*									
Stafford, Mary	....	5009	....	5068	4949	....	....	....	....	....
		5084			5083					
Stephenson, Eileen	....	6321	....	6326	6305	....	....	6324	....	....
					6329					
Strandell, Victor C.	....	....	9686	....	....	....	....	....	....	....
Sturgis, Lawrence	....	....	3635	....	....	3647	....	....	....	....
			3648*						....	....
Sturgis, Thomas T., Jr.	....	....	4308	....	....	....	....	....	....	....
Sullivan, Maurice J.	....	7615	....	7595	7555	....	....	7634	....	7660
				7652						
Tartt, James B.	1411	....	....	....	....	1425	....	....	....	....
Taylor, Frank C.	....	6971	....	....	6959	....	....	6974	....	....
					6983*					
Tripp, William H.	....	4804	4802	....	....	....	....	....	....	....

Tucker, S. J.	....	8843	....	8842	....	8843	8834	....	....	....	
Tulloch, Thomas A. C.	....	....	....	7110	....	7109	7090	....	....	7108	
Twitty, Brice L.	1699	....	....	1710	....	....	....	1708	....	....	
Vander, William C.	....	7147	....	....	....	7138	7111	....	....	7145	
Van der Putten, P. J. A.	....	....	4319	....	....	7147	7146*	....	....	7146	
Wall, F. Lowry	7284	....	4354*	....	....	4335	....	4330	....	4353	
Wallace, Charles J.	7313*	....	....	7308	....	7301	....	7289	....	....	
Waters, R. V.	....	4206	4191	....	....	7312	....	4207	....	....	
Watson, M. L.	....	....	....	....	....	....	8270	....	....	....	
Wells, Lawrence William	....	8861	....	8860	....	....	8856	....	....	....	
	37	....	....	174	....	102	....	83	....	....	
	197*			230		225		213			
	234*										
Wiener, William R.	....	....	4299	....	....	....	....	....	....	....	
Winslow, Harold	2722	....	....	2730	....	....	....	....	....	2727	
	2729*										
Woelfle, Henry F.	....	4218	4209	....	....	4221	....	4231	....	....	
Yeaton, Earl	....	....	4232*	9715	9700	....	....	4235	....	....	
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1935

No. 11, Original

EXCEPTIONS OF THE DEFENDANT THE STATE OF FLORIDA TO THE REPORT OF THE SPECIAL MASTER AND REQUEST FOR AMENDED FINDINGS

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 11, Original

STATE OF TEXAS,

vs. *Complainant,*

STATE OF FLORIDA ET AL.,

Defendants.

Statement of the Case.

This is a suit involving a controversy between four sovereign States, the sole issue being whether Edward Howland Robinson Green was at the time of his death on June 8, 1936, domiciled in the State of Texas or the State of Florida or the Commonwealth of Massachusetts or the State of New York, for the purpose of determining which of said States has the exclusive right and jurisdiction to impose and collect the succession, transfer, estate or inheritance taxes imposed by the domiciliary State upon the intangible personal property owned by said Edward Howland Robinson Green at the time of his death.

EXCEPTIONS OF THE DEFENDANT, THE STATE OF FLORIDA, TO THE REPORT OF THE SPECIAL MASTER, AND REQUEST FOR AMENDED FINDINGS.

I.

This defendant excepts to the finding stated in the first full paragraph on page 20 of the Master's Report as follows:

> "He joined clubs, societies and social organizations in every community where he dwelt, but never attended them."

1e

because the said statement and finding standing alone does not inform the Court of the decline of Green's interest in clubs, societies, and social organizations in Massachusetts and his continued interest in such clubs, societies, and social organizations in Florida until his death.

II.

This defendant excepts to the finding of the Master, stated on page 20 of the report, that in Massachusetts and Florida, Green took an active interest in yachting and boating, owned a number of boats, and gave trophies for water sports, because the said statement and finding does not inform the Court of the decline of Green's interest in yachting and boating and the giving of trophies for water sports in Massachusetts, and his continued interest in yachting and boating and giving of trophies for water sports in Florida.

III.

This defendant excepts to the finding stated in the first full paragraph on page 20 of the Master's Report, as follows:

> "He cared nothing for society and never went to social functions,"

because the Master failed to find that in Florida, Green manifested an interest in social functions given by himself and wife.

IV.

This defendant excepts to the finding stated on page 20 of the Master's Report as follows:

> "He had no religious affiliations, but contributed substantial sums to charitable organizations wherever he happened to be,"

because the said finding does not inform the Court of the decline of Green's interest in and contributions to chari

table organizations in Massachusetts, and his continued interest in and contributions to religious and charitable organizations in Florida.

V.

This defendant excepts to the finding stated in the second paragraph on page 27 of the Master's Report as follows:

> "With few exceptions, insubstantially all deeds, papers, and legal documents, he described himself as of Terrell, Texas,"

because the Master failed to find that in a substantial number of deeds, papers, and legal documents made and executed both by and to Green during his last few years in Florida, he described himself and was described as of 46 Star Island, Miami Beach, Dade County, Florida.

VI.

This defendant excepts to the finding stated in the second full paragraph on page 27 of the Master's Report as follows:

> "And the registration of his yacht and numerous boats showing Galveston, Texas as the home port,"

because the Master failed to find that the boats acquired by Green in his later years were registered in Florida with the home port shown there.

VII.

This defendant excepts to the finding of the Master stated on page 35 of the Master's Report wherein he found that on Green's first visit to Round Hills in August, 1917, he determined to build there a monumental home, because such finding is contrary to the evidence.

VIII.

This defendant excepts to the finding stated in the last paragraph on page 35 of the Master's Report, as follows:

> "From 1918 to 1921 the development of this property was his principal occupation ° ° °."

because: (a) such finding is contrary to the evidence; (b) the Master failed to find that from 1918 to 1921 Green's principal occupation was the management of the great estate left by his mother Hetty Green, of which he was the sole trustee.

IX.

This defendant excepts to the finding stated in the second paragraph on page 36 of the Master's Report, as follows:

> "But with this exception retained the whole estate of about 270 acres up to the time of his death,"

because the Master failed to find that Mrs. Wilks and Green jointly owned and retained about 130 acres of the Round Hills property together with the improvements thereon including the Round Hills House.

X.

This defendant excepts to the finding stated on page 42 of the Master's Report as follows:

> "His remains were brought there from Lake Placid for the funeral service, and Mrs. Green continued to occupy Round Hills for six months after his death."

because: (a) it has no evidentiary value in determining the issue involved here; (b) there was no evidence that Green requested that his remains be brought to Round Hills for funeral services.

XI.

This defendant excepts to the findings stated on page 42 of the Master's Report, as follows:

> "Between 1917 and 1936, Green expended on the Round Hills Estate on both capital account and maintenance $6,688,639.55 (D. 268),"

because the Master failed to further find and inform the Court that the said amount included large sums of money spent on radio, aviation, Whaling Enshrined, and other activities not connected with Round Hills as a place of residence.

XII.

This defendant excepts to the finding stated on page 42 of the Master's Report, as follows:

> "He * * * never openly acknowledged Round Hills as his legal residence,"

because the Master failed to find: (a) that Green never in any manner acknowledged Round Hills to be his legal residence; (b) that in every instance where the subject was discussed, Green invariably acknowledged that Round Hills was not his legal residence.

XIII.

This defendant excepts to the finding stated on page 43 of the Master's Report, as follows:

> "He was confined to the house more frequently and his activities were greatly curtailed or discontinued, although his interest survived,"

because the Master failed to find that as his activities in Massachusetts were curtailed or discontinued and his interest declined, his activities and interests in Florida increased and continued.

XIV.

This defendant excepts to the finding stated in the first paragraph on pages 43 and 44 of the Master's Report, as follows:

> "While there, Green purchased two adjacent lots for $120,000, one of which contained a yacht club which he remodeled into a dwelling for the following season."

because: (a) the Master failed to find that the club house was razed and a dwelling erected on said lot, new in every respect except that the walls of the reception room of the club house were retained and formed the walls of the living room in the dwelling so erected; (b) the Master failed to find that the dwelling erected on said lot was designed and constructed as a home for Green and his family and so used from the time of its occupancy in 1927 until his death.

XV.

This defendant excepts to the finding stated in the first incomplete paragraph on page 44 of the Master's Report as follows:

> "During the succeeding years until his death, Green's average stay in Florida was about four and one-half months between January and May."

because: (a) the Master failed to find the steady increase in time spent by Green in his Star Island home from the time it was first occupied in 1927; (b) the Master failed to find that for the period beginning with 1928 down to June 8, 1936, Green spent more time in Florida than in Massachusetts; (c) the Master failed to find that Green spent his last three Christmases in his Star Island home, Miami Beach, Florida.

XVI.

This defendant excepts to the Master's report because he failed to find or show: (a) the progressive building up of

Green's Star Island home; (b) that in 1927 it was completely remodeled for further comfort and to satisfy Green's requirements; (c) that in 1928 and 1929 further extensive additions and alterations were made; (d) and in 1931 an entire new wing was added at a cost of approximately $85,000, which wing became the living quarters of Green and his wife; (e) that said Star Island home was kept in A-1 condition until Green's death.

XVII.

This defendant excepts to the finding stated in the last sentence of the first incomplete paragraph on page 45 of the Master's Report, as follows:

> "The house contained no library, no framed pictures, or mementoes of his ancestors, or articles of a sentimental nature or personal association as at Round Hills,"

because: (a) the Master failed to find that Green's Star Island home contained a library; (b) that it contained a photograph of his mother; (c) that it contained oil paintings of himself; (d) that it contained articles of a sentimental nature to him.

XVIII.

This defendant excepts to the finding stated on pages 45-46 of the Master's Report, as follows:

> "Green also had several automobiles for himself and Mrs. Green containing Florida and Massachusetts license plates, which were brought from Round Hills to Star Island and sent back at the end of the season,"

because the Master failed to find that some of the automobiles referred to were purchased by Green in Florida and carried from his home at Star Island to Round Hills and back to Star Island upon his return rather than having been

"brought from Round Hills to Star Island and sent back at the end of the season."

XIX.

This defendant excepts to the finding stated on page 47 of the Master's Report, as follows:

> "Everything he did indicated a seasonal vacation and relaxation from physical and mental effort."

because the said statement is contrary to the fact established by the record.

XX

This defendant excepts to the finding stated on page 47 of the Master's Report as follows:

> "Aside from his financial interest in the Fogal Dry Dock and Storage Company, where he kept his boats, and a stock interest in some of the local banks, his life in Florida was typical of an invalid seeking health."

because the said finding is contrary to the fact established by the evidence.

XXI.

This defendant excepts to the Master's report because he failed to find that Green disposed of practically all of his boats in Massachusetts and later acquired and kept boats in Florida until his death.

XXII.

This defendant excepts to the Master's Report because he failed to find that Green, long prior to his death, discontinued giving trophies for water sports in Massachusetts and continued to give trophies for water sports in Florida as long as he lived.

XXIII.

This defendant excepts to the Master's Report because he failed to find that Green, long prior to his death, resigned

from and gave up his club memberships in Massachusetts and continued his club memberships in Florida until his death.

XXIV.

This defendant objects to the Master's Report because he failed to find that Green, long prior to his death, ceased to make contributions to community projects in Massachusetts and continued to make contributions to community projects in Florida.

XXV.

This defendant excepts to the Master's report because he failed to find that Green, long prior to his death, gave up and discontinued his photography in Massachusetts.

XXVI.

This defendant excepts to the Master's Report because he failed to find that Green lost his interest in radio in Massachusetts long prior to his death.

XXVII.

This defendant excepts to the Master's Report because he failed to find the gradual decline of Green's interest in the Round Hills Airport.

XXVIII.

This defendant excepts to the Master's report because he failed to find that Green's construction of the Round Hills house was primarily for purposes other than a home.

XXIX.

This defendant excepts to the Master's report because he failed to find that Green had his name removed from a stone placed near the main entrance of the Round Hills house.

XXX.

This defendant excepts to the Master's report because he failed to find that Green's Star Island Home was the only home of which Green was the sole owner at the time of his death.

XXXI.

This defendant excepts to the Master's report because he failed to find that on numerous occasions both in Florida and elsewhere, Green referred to his Star Island Home as "Home".

XXXII.

This defendant excepts to the Master's report because he failed to find that no income tax was assessed against Green by the Commonwealth of Massachusetts.

XXXIII.

This defendant excepts to the Master's report because he failed to find that Green's attorneys advised him that his spending more than six months a year in Massachusetts did not make him liable to Massachusetts for an income tax, and that he did not spend thereafter more than six months in Massachusetts during any one year.

XXXIV.

This defendant excepts to the Master's report because he failed to find that Mrs. Wilks paid one-half the taxes on the Round Hills House except for the first few years after its completion.

XXXV.

This defendant excepts to the Master's report because he failed to find that when Green left Round Hills at the close of the summer seasons, the house was closed, the doors and

windows were protected by storm doors and shutters; the furniture and pictures were covered; the silverware, chinaware, and linen put away; the draperies covered, and the master's kitchen closed.

XXXVI.

This defendant excepts to the Master's report because he failed to find: (a) when Green went to Texas he was sent by his mother to attend to her business; (b) when Green moved from Texas to New York in 1911, he was called back by his mother to attend her business; (c) that when he later went to Massachusetts, it was in response to his mother's request that he there build a monument to her memory.

XXXVII.

This defendant excepts to the finding of the Master stated on page 48 of the Master's report as follows:

> "In 1931 and again in 1933, his friend, Walter Allen, of Terrell, Texas, advised him to change his legal residence from Texas to Florida because of certain pending tax legislation in Texas. After consulting his attorney, Charles W. Pierson, who advised him what legal steps were necessary to make a change of domicile; and that as he had a residence in Florida it would only be necessary to make a formal announcement of his intention—Green did nothing * * ***

because: (a) the proposals to change his legal residence in the particular instances were made for the purpose of avoiding taxes and had no reference to a change of domicile; (b) Green could not have changed his domicile from Texas in 1931 or 1933 for the reason that long prior thereto his domicile had been abandoned and established elsewhere; (c) the said finding is not proper to be considered against Florida in the determination of Green's domicile at the time of his death; (d) the Master failed to find that the incidents

stated in said finding should be given no weight in the determination of Green's domicile.

XXXVIII.

This defendant excepts to the conclusion stated on page 51 of the Master's Report, as follows:

> "His intention to return to Texas might be presumed while temporarily residing in New York engaged in the conduct of his own and his mother's business, if he had done nothing inconsistent with the intention to return."

because: (a) he failed to find that every act of Green's from the time he moved from Texas in 1911 was inconsistent with any intention to return thereto; (b) the residence of Green in New York for a number of years after returning there was as permanent as it had been in Texas.

XXXIX.

This defendant excepts to the conclusion stated on page 53 of the Master's report as follows:

> "To him domicile was a mental state where he could obtain certain political advantages and freedom from taxation. He was not interested in making a home for posterity because he and his sister were the last of their line."

because the said conclusion is argumentative.

XL.

This defendant excepts to the conclusion stated on pages 53 and 54 of the Master's report as follows:

> "He did have some unformulated notion of leaving a memorial to his mother, his sister and himself, and the granite edifice at South Dartmouth on the land that had been in the family for generations surrounded by maritime antiquities in which the Green fortune originated,

with mementoes suggestive of his whaling ancestors, formed to him the most appropriate memorial he could leave after death, and the *most permanent* home he could enjoy while living."

because the same is argumentative.

XLI.

This defendant excepts to the conclusion stated on page 54 of the Master's report, as follows:

"There is no sufficient evidence to show that Green ever intended to make New York his permanent home."

because: (a) it appears that this conclusion is predicated in part on a statement or declaration of Green whereas in other parts of his report, the Master finds that Green's declarations being in conflict with his manner of living, are not sufficient on which to determine domicile; (b) the conclusion is also in part founded upon the fact that Green made no effort to become a voter in New York, and that he owned no real estate there except what he acquired as a result of mortgage foreclosures, and paid no personal or income tax in New York.

XLII.

This defendant excepts to the conclusion stated on page 54 of the Master's report as follows:

"In a sworn statement to the tax officials of New York, he declared that he was not and never had been a resident of New York."

because the Master used the said statement made by Green for tax avoidance as a reason for finding that Green never intended to make New York his permanent home while the Master failed to apply like statements made by Green against the claim of Massachusetts as to Green's domicile.

XLIII.

This defendant excepts to the conclusion stated on page 54 of the Master's report as follows:

> "This domicile actually established in Massachusetts in 1921, notwithstanding the mental reservation of his Texas residence, was not abandoned when he built his Star Island Home."

because the Master failed to find that whatever domicile Green had prior to the time he built and occupied the Star Island Home, such domicile was abandoned and his Star Island Home became and was his domicile prior to and at the time of his death on June 8, 1936.

XLIV.

This defendant excepts to the conclusion stated on page 55 of the Master's report wherein he concluded the true criterion to be:

> "The true criterion, therefore, for determining domicile where there are two homes seems to be the order of acquisition, etc."

because the Master obviously failed to apply the further principle of law as follows:

> "Where a man has two homes, and is domiciled in the earlier he may by a mere change of attitude toward his latter home come to have a principal home and therefore a domicile there."

XLV.

This defendant excepts to the conclusion stated on pages 54 and 55 of the Master's report as follows:

> "But under the authorities, the adoption of a changed location or a subsidiary or secondary home for the sake

> of health does not constitute the abandonment of the old and acquisition of a new domicile."

because the Master assumes as a basis for said conclusion that the establishment by Green of his Star Island Home was subsidiary or secondary to his Round Hills place which presumption and conclusion is contrary to the ultimate fact established by a preponderance of the evidence in the case, and further because the Master assumes as a basis for said conclusion that the establishment of the Star Island Home was primarily for the sake of health, and concludes that a change of domicile can not be induced by a consideration of health, which conclusion is contrary to the established principle of law.

XLVI.

This defendant excepts to the statement or finding on page 55 of the Master's report, as follows:

> "* * * never voted there, never paid any intangible or income taxes in Florida, and as late as 1935, in a judicial proceeding in Florida, testified that he was a resident of Terrell, Texas, "

because the Master used the facts that Green never voted nor paid any intangible or income taxes in Florida, and the statement that as late as in 1935 in a judicial proceeding in Florida, he testified that he was a resident of Terrell, Texas, as a basis for concluding that Green was not domiciled in Florida at the time of his death, and did not apply the fact that Green never voted in Massachusetts nor paid any income taxes there as a reason for finding that Green was not domiciled in Massachusetts; and further, because Florida did not have at the time of Green's death, and never had had, an income tax law.

XLVII.

This defendant excepts to the Master's report because he failed to find that Green consistently on all occasions

declared that he was not a resident, inhabitant, or citizen of the Commonwealth of Massachusetts.

XLVIII.

This defendant excepts to the conclusion stated on page 55 of the Master's report that Green did not attempt to make Florida his own country because the same is in conflict with the ultimate fact established by a preponderance of the evidence.

XLIX.

This defendant excepts to the statement contained on page 55 of the Master's Report as follows:

> "Star Island was left in charge of a caretaker and was only visited by Mrs. Green to remove some of her personal possessions."

because: (a) the said statement is not supported by the evidence; (b) the acts of Mrs. Green subsequent to Green's death can not be used to determine Green's domicile at the time of his death.

L.

This defendant excepts to the conclusion stated on page 56 of the Master's report, as follows:

> "Round Hills was not only the earlier home but as the findings of fact show, it was the principal, predominant and permanent home when compared with the Star Island residence,"

because the said conclusion is contrary to the ultimate fact established by a preponderance of the evidence in this case.

LI.

This defendant excepts to the statement or conclusion on page 56 of the Master's report as follows:

"Mrs. Green looked forward to the time when she might be left alone and had selected a site and considered plans for a small cottage on the South Dartmouth estate which were never carried out,"

because the circumstance here relied on by the Master is too remote to be entitled to any weight in the determination of Green's domicile.

LII.

This defendant excepts to the statement or conclusion on page 57 of the Master's report as follows:

"Both were homes, but Round Hills was the earlier, predominant, and principal home,"

because said conclusion is contrary to the ultimate fact established by a preponderance of the evidence.

LIII.

This defendant excepts to the ultimate finding and conclusion on page 57 of the Master's Report, as follows:

"Upon a careful consideration of all the evidence in the case and the memoranda submitted by counsel for the respective parties, I find that the domicile of Edward Howland Robinson Green at the time of his death June 8, 1936, in fact and in law, was in the Commonwealth of Massachusetts."

for the following reasons:

(a) The said finding and conclusion is not supported by a preponderance of the evidence in the case.

(b) The preponderance of the evidence under applicable provisions of law support only the conclusion that the domicile of Edward Howland Robinson Green at the time of his death June 8, 1936, was in the State of Florida.

Therefore, this defendant requests that the said ultimate finding and conclusion be amended, so as to read as follows:

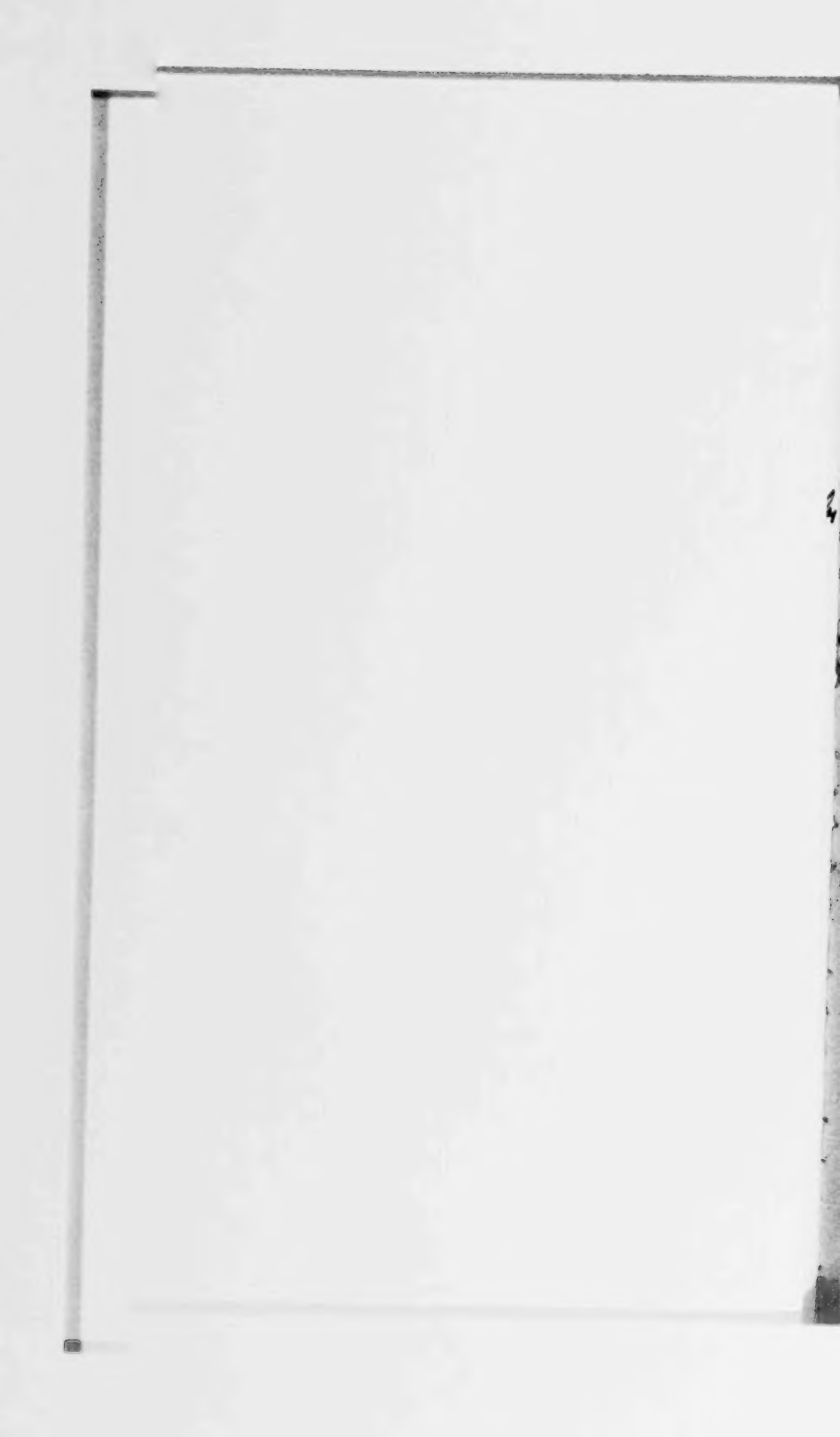
"Upon a careful consideration of all the evidence in the case under applicable provisions of law, it is found that the domicile of Edward Howland Robinson Green at the time of his death June 8, 1936, in fact and in law was in the State of Florida."

Respectfully submitted,

GEORGE COUPER GIBBS,
Attorney General of Florida;

H. E. CARTER,
Assistant Attorney General;

EDGAR G. HAMILTON,
Special Attorney for the Commissioner of Revenue of the State of Florida,
Solicitors for Defendant, the State of Florida.



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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

NO. ~~11~~ ORIGINAL

THE STATE OF TEXAS,
Complainant

vs.

THE STATE OF FLORIDA, ET AL,
Respondents

EXCEPTIONS AND OBJECTIONS TO THE FINDINGS AND REPORT OF THE SPECIAL MASTER

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IN THE

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OCTOBER TERM, 1938

NO. 11 ORIGINAL

THE STATE OF TEXAS,

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vs.

THE STATE OF FLORIDA, ET AL,

Respondents

EXCEPTIONS AND OBJECTIONS TO THE FINDINGS AND REPORT OF THE SPECIAL MASTER

To the Supreme Court of the United States:

Comes now complainant, the State of Texas, and presents its exceptions and objections to the report of the Special Master filed in this Court at the October Term, 1938. The Report is in two volumes, the first containing a statement of the case and the ultimate issue for decision; a statement of the legal principles applied by the Special Master to the facts; findings of fact and the conclusion that the domicile of Edward Howland Robinson Green at the time of his death June 8, 1936, in fact and in law, was in the Commonwealth of Massachusetts; together with other appropriate matters not necessary to state.

This portion of the Report concludes with the recommendation for a decree in accordance with the findings of the Special Master; and a recommendation that the Court reserve jurisdiction for certain purposes.

Volume II contains a comprehensive statement of the evidence adduced in behalf of all the parties to the cause. To this digest we interpose no objection. It is thought, in the main, to be a fair summary of the material evidence introduced at the hearings. It should be useful to the members of this Court, in getting a full picture of the factual side of the case.

No objection is made to the form and manner of the Special Master's report; although it is to be observed that the "Findings of Fact" are not wholly ultimate in character and such ultimate findings as are found are mixed with evidentiary matters. In the requested findings we filed with the Special Master, in response to his courteous invitation, we endeavored to make such findings entirely ultimate in character. We think this must be done before the proper legal conclusion or conclusions may be properly drawn. In simple justice, however, we concede the great difficulty confronting the Special Master in this case, in the avoidance of mixing evidentiary matter with ultimate findings. We shall try to indicate in our exceptions and objections the ultimate facts which should be found on the whole record; and to indicate in our brief, to be later filed, the grounds and reasons for our objections to both the findings and conclusions of the Special Master.

We have no objections to the jurisdictional facts found in the Report. On the contrary, in common with all other parties to the suit, we have requested substantially those very findings. The Special Master has well stated the considerations upon which it is thought the Court has jurisdiction to and should adjudicate the domicile of Green at the time of his death, and we adopt his statement and his reasoning. We have no doubt that the cause, under the pleadings and the evidence, presents an actual justiciable controversy of a civil nature between the States, parties hereto, of which this Court has exclusive original jurisdiction.

To the Report certain photographs have been appended. Their verity, of course, is not questioned; but we have felt impelled to except and object to them, in certain particulars. From the Texas' standpoint they have no relevancy whatever; and our objections go to that point and to the further point that they reveal nothing upon the vital and controlling question: Whether either residence depicted was a "home", as distinguished from a mere dwelling place or residence. If neither was Green's home, in the true sense, and he had no home in New York, then it follows ineluctably that his Texas domicile, established long years before, continued and remained his home or "legal residence", as he consistently and persistently termed it.

The photographs reveal the solid grandeur and massiveness of the Round Hills mansion, the exotic charm and beauty of the Star Island house and

grounds; and nothing more. If any pictorial representations at all are to be made to the Court, they should be complete and in no sense misleading or confusing. Our objections may be of doubtful force or value, but we have been led to make them because of the failure of the Special Master to limit the purpose or effect of their inclusion. We may be permitted to add that, throughout the case, we have conceded that either residence was potentially a home.

With the above qualifications and reservations, we present the following exceptions and objections to the matters contained in the report of the Special Master:

I.

Complainant objects and excepts to the finding and statement by the Master on page 20 of his Report in which it is found that "he (Green) had a number of protegees, most of whom were daughters of old Texas friends and acquaintances in Massachusetts", insofar as such statement and finding is to the effect that such protegees or any of them were daughters of acquaintances in Massachusetts; inasmuch as there is no testimony of record showing or establishing that any of the protegees of E. H. R. Green were the daughters of acquaintances in Massachusetts, but to the contrary the evidence is plain and undisputed that none of the protegees of Green were the daughters of any acquaintances of his in the State of Massachusetts, that only one of the nu-

merous protegees of Green was known as a Massachusetts' resident, and the record establishes that such Massachusetts' protegee or ward was not the daughter of any acquaintance of Green. The only Massachusetts' ward was Miss Eileen Stephenson, who, at the time of trial, resided in the City of New York (R. 6306), and the record does not support such finding by the Master but contradicts such finding (R. 6307, 6308, 6309). The witness Stephenson testified that she was known as "the only Massachusetts' ward" (R. 6322-6323).

II.

Complainant objects and excepts to the findings by the Special Master on Page 26 under the general heading, "Associations and Activities in Texas", for the reason that in the last paragraph thereof which purports to deal with Green's political activities and interest in politics in the State of Texas there has been omitted pertinent, relevant and uncontradicted testimony bearing upon Green's activities and interest subsequent to January, 1915. The findings of the Master are incomplete if the same purport to give a fair summary of Green's activities in Texas politics, inasmuch as the same raises the inference that subsequent to 1915 Green evidenced no interest or participation in politics in the State of Texas.

Complainant in this connection directs attention to the facts set out on page 49 of the Appendix to

Complainant's Requested Findings of Fact, which are as follows:

"The faction of the Republican Party, known as the Green-McDonald faction continued as a factor in Texas politics until 1928. In 1920 Green contributed $3000 to McDonald for political purposes (R. 469-470, 3391). On July 27, 1920 Green wrote Wilmot that, 'We may have been turned down at the Convention, but I think a few of the Green followers will be on top when it comes to dishing the officers (offices) if Harding is elected.' On January 19, 1925, Green wrote Allen that, 'In regard to the coming change in Postmasters at Terrell, if I am requested to endorse any candidate, you may rest assured that I shall do nothing until I hear from you.' In 1928 the Green-McDonald faction held district conventions for the election of delegates to the National Convention, while the Creager faction elected delegates from the state at large (R. 471-473. Likewise, the Green-McDonald faction was active in the 1936 campaign (R. 473-474). In 1928 it was agreed between Green and McDonald that if the Green-McDonald faction were seated in the National Convention that Green would be elected State Chairman again, and Green put up one-half of the expenses of the campaign." (R. 475-476).

III.

Complainant objects and excepts to the statement by the Special Master (Report page 35), to the

effect that during the third and closing period of Green's life, there was a withdrawal from his former association with Texas, because such deductions and conclusions on the part of the Master are unwarranted by the testimony and are not supported by the testimony in this case. The inference arising from such statement is that Green voluntarily withdrew from the former associations he had in Texas, whereas, under the record, his associations in Texas continued as they had been during the ten year period from 1911 to 1921. Said statement is incomplete in that, if it be found from the record that there was any withdrawal from Green's former associations with Texas, the contributing and primary cause for such withdrawal—his ill health —should be in all fairness set out as the cause for any such withdrawal.

IV.

Complainant objects and excepts to the findings and conclusions of the Special Master under the subhead of Round Hills Estate, South Dartmouth, Massachusetts, page 35 et seq., for the reason that such findings and conclusions are of an evidentiary character and are not ultimate facts. If the Master chooses to put the form of his findings in an evidentiary fashion, then all the evidence bearing upon the question of attachment, affection or regard for the locality known as Round Hills should be set down. In all fairness, therefore, it should be stated and found by the Master that the structure existing

on the property known as the old Howland Homestead was wholly neglected by Green, and that he refused to have such structure repaired and the same fell into such a great state of disrepair during his lifetime, that it was unsafe for visitors to go into such structure, and Green himself warned them against visiting such structure on account of its unsafe condition; that during the period of his life Green refused to have such structure repaired, although the cost of such repairs would have amounted to only about $2100. The report should also set out facts which reflect Green's utter disregard of affection or sentiment for the Round Hills property as an ancestral estate or as having any sentimental value or esteem to him, which is illustrated by the fact that he failed and refused to preserve mementos attached to the place and to its former residents, such as the old stone trough which was permitted to be broken into rocks for use in construction, and his causing a dog to be buried in the family or ancestral burial ground.

Said finding is further incomplete and incorrect in that it assumes an affectionate and sentimental regard on the part of Green for the premises known as Round Hills as an ancestral estate, in the face of a record in which there is no testimony of probative value showing or establishing any such sentiment or regard.

The Master has wholly failed to give effect to the undisputed testimony in the record that the house located on the Round Hills property was erected for

the purpose of building some character of memorial to the memory of Mrs. Hetty Green and for the purpose of being an institution of some character. The Master has in fact found that such house was institutional in appearance. The finding on page 56 of of the report that the monumental character of the building does not detract from its serviceability as a residence, is incomplete in failing to also set out that such monumental character and the expressions and activities of Green with reference to the same clearly negative any intention on his part to regard the same, at any time, as his domicile, or to make it his home, in fact or in intention.

V.

Complainant objects and excepts to the finding contained on page 39 of the report in which it is set out and held that "his (Green's) guests were limited to some old residents of New Bedford, visitors from Texas and his wards"; such finding is unsupported by the evidence, insofar as the inference may be drawn therefrom, that old residents of New Bedford or any residents of New Bedford were personal guests of Green at the premises known as Round Hills Estate. The record shows only one occasion on which any resident of New Bedford or Massachusetts was present at his house on any social occasion. The finding of the Master is incomplete, inasmuch as he does not find that Green deliberately eschewed the society of New Bedford and evidenced no interest in local, social, political or other affairs, as is fully established by the evidence.

VI.

The complainant objects and excepts to the finding by the Master to the effect that Green invariably gave as his reason for never openly acknowledging Round Hills as his legal residence that he wished to avoid paying taxes there. Such finding is on its face contradictory.

Such finding by the Master implies that Green privately acknowledged Round Hills as his legal residence, although no direct finding is made to that effect; such implied and inferential finding to the effect that Green acknowledged Round Hills as his residence privately is wholly unsupported by evidence; the inference that Green declared that he would not or could not acknowledge Round Hills publicly as his residence on account of taxes is likewise without support in the testimony.

If by this finding the Master has intended to hold that Green desired to and did retain his Texas domicile for the purpose of avoiding taxes in Massachusetts or elsewhere, such holding is wholly immaterial.

VII.

On page 42 of the report the Master finds that in 1915 Green had a yacht, United States, taken from the state of Massachusetts to avoid taxes thereon. Complainant objects and excepts to such finding because same is wholly immaterial, erroneous and un-

supported by the evidence. The yacht, United States, was not purchased until October 3, 1916 (R. 2928, 3562, 3580, 5354). Shortly after its purchase, Green went to Texas in it (R. 6782-6783). The incident to which the Master is evidently referring is set out on pages 216 and 217 of the Master's digest of the record, and the same occurred on February 26, 1919. At that time Green had no character of residence in Massachusetts. Green's desire not to pay taxes on the yacht in Massachusetts is wholly immaterial either as an evidentiary or ultimate finding in this cause.

VIII.

Complainant objects and excepts to the failure of the Master in his report to make a full and complete finding on the condition and state of Green's health during the period from 1915 to the date of his death. Complainant refers to what it deems to be a fair, full, and complete summary or statement of the evidence with respect to Green's health contained on pages 55 to 58, inclusive, of the Appendix to its requested findings of fact.

IX.

Complainant objects and excepts to the findings and conclusions of the Master and to the failure of the Master to give proper and due weight and importance to the condition and state of Green's health particularly after the year 1921. The state and

condition of Green's health was the determining factor and element in accounting for Green's infrequent trips to the State of Texas during that period, and in complainant's opinion is decisive, and likewise accounts for his movements and habits of life during that period which the Master has termed "nomadic".

X.

Complainant objects and excepts to the finding by the Master (Report page 51), that after the death of his mother and his marriage, Green relinquished his home in the Jarvis place in Terrell, Texas. This finding is contrary to the Master's statement and finding (which is correct) made on pages 24 and 25 of his Report, which shows that such room was rented in 1911 and kept for a period of three years. Such room was relinquished several years prior to the events of the death of Green's mother and Green's marriage.

XI.

Complainant objects and excepts to the statement by the Master in his finding (Report page 51) that Green, instead of returning to Texas, almost immediately after his marriage went to Round Hills where he and his sister owned what he regarded as an ancestral tract of land, purchased additional land and then proceeded to erect a palatial house which was completed and occupied by him in 1921. Such findings are incomplete and misleading, in that the

record undisputably shows that the trip Green and his wife made immediately after their marriage was made to Long Island, Block Island, and Buzzard's Bay, and shortly thereafter Green and his wife did return to Texas, making such trip on the yacht, United States. Such finding is misleading in that it would be inferred therefrom that Green immediately after his marriage purchased additional land at Round Hills and immediately after his marriage proceeded to erect a palatial house. The record undisputably shows that Green was married in July, 1917 and did not contract for the building of a house on the premises known as Round Hills until June, 1919, (D 271), and did not purchase additional land adjacent to the original Round Hills property for several years after his marriage.

The witness Davis (a Mass. witness) testified that at the time Green started making improvements on the Round Hills property that he declared unequivocally that he did not intend to erect a house there (D 307).

XII.

Complainant objects and excepts to the finding by the Master (Report page 52) to the effect that where declarations are self-serving and made with the intention to deceive, they will be disregarded, and the conduct of the party alone will govern. Such finding is not applicable to the facts contained in the record in this cause. Such finding and its application herein by the Master is itself an assumption

that Green's domicile was during all of such period elsewhere than in Texas. In other words, the Master has assumed that such domicile was not in Texas in order to find that fact.

XIII.

Complainant objects and excepts to the finding made by the Master (Report, page 52) as follows: "After 1921, Green's declarations that he had a legal residence in Texas were made to the taxing officials of New York, Massachusetts, and Florida for the purposes of escaping taxation in those jurisdictions. As a matter of fact, he had no actual abode or residence in Texas, and in law, had abandoned his former home there."

The true facts are that Green told Long, Commissioner of Taxation and Corporations of the Commonwealth of Massachusetts, that he wanted to consider himself a resident of Texas, and was not of the opinion that the time had arrived when he wanted to establish himself as a citizen of Massachusetts and a taxpayer (D 339). Furthermore, there is not a scintilla of evidence in the record justifying the implication in this finding of the Master that Green had deceived the taxing authorities of any of the respondent States or that he had misrepresented the facts as to his having or not having a place of residence and actual abode in the State of Texas at those periods. Moreover, the taxing authorities of all the respondent States had full opportunity of observing and considering all of the criteria and

indicia of residence relied upon by the Master, and this is particularly true of the witness Long, Commissioner of Taxation and Corporations of the Commonwealth of Massachusetts, since he personally visited Green at the Round Hills house, and full opportunity was afforded him of observing and evaluating all of the evidences of residence in Massachusetts relied upon by the Master in his report.

All of the taxing authorities of the three respondent States, New York, Massachusetts, and Florida, had full opportunity and all the means of ascertaining the facts with relation to Green's being or not being a resident of those States; and the taxing authorities of all three States evidently reached the conclusion that Green was not a resident of their respective jurisdictions, and abandoned all efforts to tax him as a resident. We qualify this last statement by conceding that after Green's death those in charge of his affairs received a notice from the Commonwealth of Massachusetts requiring them to file an income tax return.

XIV.

Complainant excepts and objects to the Master's finding (Report page 53) that Green was nomadic in his tastes and evidently regarded domicile as something distinct and apart from home or residence; because his nomadic tastes, if any, had nothing to do with his conceptions of domicile, home, or residence.

XV.

Complainant excepts and objects to the use mad by the Master of the finding that Green was no madic in his tastes; because even a nomad must hav a domicile, and the fact, if it be a fact, militate against the Round Hills residence as his true hom and permanent place of abode, as much so as th Florida residence and the several abodes in Nev York City; and the more of a nomad Green migh be conceived to have been, the greater reason for de termining that his domicile and true home was i Texas, which he had firmly established and fixe in his earlier years. There his hearth-stone was and, in all his wanderings, his heart and his hom was there.

XVI.

Complainant excepts and objects to the refusal o the Master (Report, page 54) to apply as against the respondent States of Massachusetts and Florida the same finding and conclusion made as to the abode of Green in New York, viz., that the evidence is insufficient to establish that Green intended to make the abodes in such States his permanent home. The same conclusion made against a permanent New York residence should have been made as to the abodes at both Round Hills and Star Island; and further because substantially the same indicia which the Master employed to reach the conclusion that Green, at his death, had established permanent homes in both Massachusetts

and Florida, apply with equal force to his New York residences. There is no more reason for rejecting the claims of New York, in this relation, than those of Florida and Massachusetts.

XVII.

Complainant excepts and objects to the finding by the Master, (Report page 52), that the domicile of choice established by Green in Texas in 1892 and maintained until 1911 was abandoned in fact, and his domestic establishment and all of his personal belongings removed to New York; because, it is manifest that the Master predicated such finding largely upon what he has termed an "admission of counsel;" whereas the only admission was that, after 1911, Green had no fixed abode or place of residence in Texas save his private car, and there was no admission that the Texas domicile had been abandoned, in fact or intention. Furthermore, such finding is not sustained by a fair preponderance of the evidence, much less by that degree of clear and convincing proof required by the law of those upon whom the burden of proving abandonment rests.

XVIII.

Complainant excepts and objects to the Master's using, as a predicate for the finding of abandonment of the Texas domicile, the citation from the general law of Texas that in order to constitute domicile, two things must concur: First, Residence; and Second, The intention of making the place of residence

one's home; because this was a mere statement o the law common to all the jurisdictions involved an was not peculiar to Texas; and further because those prerequisites and the concurrence thereof ar as necessary to the acquisition of a new domicile a they are to the establishment of an original domicile (Report, page 51.)

XIX.

Complainant excepts and objects to the Master's failure and refusal to recognize the principle that when a person has established a domicile of choice he does not lose it until he has acquired, in fact and intention, a new home; and further because, the Master has failed to recognize that while both fact and intention must concur to establish a domicile, intention alone will suffice to retain one. The latter principle is all important in this case, because of the singular lack of evidence to convincingly show that Green intended to make either the New York abodes, the Massachusetts or the Florida residence a home in the true sense; and because, of the impressive array of declaratory evidence to the contrary and the manifest intention of Green to maintain his home and domicile in Texas.

XX.

Complainant excepts and objects to the conclusion of the Master, (Report, page 52), that: "Undoubtedly residence, unless combined with intention, cannot affect and change the domicile, but where the

declarations are self-serving or made with intention to deceive they will be disregarded and the conduct of the party alone govern," and the use of this generalization to demonstrate the actual acquisition of a new home in Massachusetts; because, there is no evidence in the record that Green's declarations were self-serving or made with intention to deceive; but, on the contrary, his declarations were obviously sincere and honest, and were, in no proper sense, self-serving. If he found advantage in the tax laws of Texas and retained his domicile there for that purpose, it was an entirely proper motive and his declarations may not be disregarded and his conduct alone be made to govern. If his statements to the taxing officials of New York, Massachusetts and Flordia were for the purpose of escaping taxation in those jurisdictions, they were not fraudulent, if, in truth, his intention was to retain the Texas domicile and to enjoy the tax advantages of that State.

XXI.

Complainant excepts and objects to the acceptance, by the Master, (Report, page 53), of the idea that Green's attitude toward Texas was merely a "floating intention" of returning, with no fixed intention of retaining Texas as his home, because there is no evidence in the record to justify that conclusion; and further because, if there was any "floating intention" on his part it was always with relation to each and all the residences and places of abode in New York, Massachusetts and Florida, respectively.

XXII.

Complainant excepts and objects to the conclusion of the Master, (Report, page 53), that to Green home was one thing and domicile another; that to him *domicile* was a mental state where he could obtain certain political advantages and freedom from taxation, and *home* was where he happened to be for the time being with his wife and domestic establishment; because, the evidence wholly fails to sustain such conclusions; but, on the contrary, shows that Green had the proper conception of home, domicile and legal residence, regarded them as equivalents, and was fully advised by able counsel what was required to change his domicile.

XXIII.

Complainant excepts and objects to the Master's conclusion, (Report, page 53), that Green's conception of home, which determines domicile, was where he happened to be at the time being with his wife and domestic establishment. The Master, elsewhere in his report rejected and refused to follow this theory, because notwithstanding the years during which Green lived in New York with his wife, and maintained a domestic establishment there, the Master found Green never intended to make New York his permanent home.

XXIV.

Complainant excepts and objects to the Master's

conclusion, (Report, page 53), that to Green, home was where he happened to be for the time being with his wife and domestic establishment, because, if that be true, it would preclude a determination of domicile in favor of Massachusetts, as opposed to the claims of Florida, for the reason that he lived with his wife and had his domestic establishment seasonally in his residences in both States. The solution, under the conception adopted by the Master, would lead to the anomalous situation of a domicile in Massachusetts during the summer and a domicile in Florida during the winter, during the last ten years of his life, an obviously impossible result; the law being that a person can have but one domicile at death.

XXV.

Complainant excepts and objects to the Master's findings of fact and the application of certain selected legal principles to the facts (Report, pages 48-56); because the Master has unduly emphasized and has given undue weight and effect to the mere physical fact of residence; and because he has ignored or, at least, has given slight consideration and effect to the equally vital element of intention as manifested by Green's persistent, consistent and long continued declarations that Texas was his legal residence and home.

XXVI.

Complainant excepts and objects to the Master's

findings of fact because he has unduly emphasized and has given undue weight and effect to the undisputed fact that Green had no fixed place of residence in Texas after 1911, except his private car, which was fully equipped for living and available for his use only until 1928; because it is not necessary, in order to retain a domicile, that the domiciliary should have a place of residence in the domiciliary State.

XXVII.

Complainant excepts and objects to the failure and refusal of the Master to give due weight and effect to the consistent and oft-repeated declarations of Green that Texas was his home and legal residence from 1911 until just before his death; it being undisputed and the Master has found that as late as March, 1935, Green testified, under oath in a judicial proceeding in Florida, that Texas was his legal residence; and as late as 1936, in his last illness, he expressed the desire to go back to Texas but was overruled by his physicians.

XXVIII.

Complainant excepts and objects to the failure and refusal of the Master to give due weight and effect to the undisputed fact that Green, after he established his domicile in Texas, consistently exercised the important rights and duties of citizenship in Texas, such as voting, political activities, the pay-

ment of Federal income taxes; and persistently refused to vote, pay income taxes and intangible personal property taxes in any of the respondent States, and refused to become a resident of any of them.

XXIX.

Complainant excepts and objects to the failure and refusal of the Master to give due weight and effect to the facts he has found, which are undisputed, in relation to voting and taxation in each of the respondent States, all such facts being undeniably in favor of Texas.

XXX.

Complainant excepts and objects to the failure and refusal of the Master to give due weight and effect to the undisputed evidence that Green always regarded Texas as his home, after 1893, and consistently to the very end claimed that he was a resident of Texas; because such facts show Green's great affection for the State and her institutions, and her people, and reveals that his heart was there; together with a firm and tenacious purpose to retain Texas as his home and domicile; and because such sentimental considerations and attitudes are the very key to the solution of this case.

XXXI.

Complainant excepts and objects to the failure and refusal of the Master to give due weight and effect

to the refusal of Green to become a resident of any of the respondent States or to become a citizen thereof, even when advised by his personal Counsel to change his residence from Texas.

XXXII.

Complainant excepts and objects to the emphasis placed upon and the undue weight and effect given by the Master to the undisputed fact that Green's visits to Texas became less and less frequent in his later years; because that fact is fully accounted for by business considerations up to about 1921, and thereafter by his constant search for health, resulting in the Round Hills house as a place of abode in the summer and the Star Island mansion for the winter.

XXXIII.

Complainant excepts and objects to the Master's findings that Green, at his death, had two homes, one in Massachusetts and the other in Florida. The evidence fails to show that either was a home, in the true sense; but does show that Green never intended to make either Massachusetts or Florida his permanent home, the very test upon which he has rejected New York, upon similar indicia and criteria.

XXXIV.

Complainant excepts and objects to the Master's finding and conclusion that the case must turn upon the principle of determining between two principal

establishments; because the same indicia he has applied would require that Green's several places of residence in New York should be taken into account, and should become a part of the equation.

XXXV.

Complainant excepts and objects to the Master's virtual ignoring of the legal significance of the several New York places of residence maintained and occupied by Green after he left Texas; because it is undisputed that Green lived for years in a commodious and comfortably furnished house at 5 West 90th Street, fully staffed and equipped, and later occupied and lived in luxurious apartments in the Waldorf-Astoria and Sherry-Netherlands Hotels; and if they failed to become homes, for lack of intention, the same must be concluded as to the Florida and Massachusetts abodes, upon like indicia and criteria.

XXXVI.

Complainant excepts and objects to the application by the Master of the legal principle that when a person has two or more homes the court must determine which was the earlier or principal home (Report page 55); because neither the Round Hills estate nor the State Island residence was a home in the true sense, and, therefore, the rule is inapplicable to the facts in this case.

XXXVII.

Complainant excepts and objects to the adoption and application by the Master of the legal principle that conduct is of greater evidentiary value than mere declarations of intent (Report page 50); because under the facts as a whole and upon the entire record, the declarations of intention by Green were, in this case, of even greater probative force and evidential value than the conduct relied upon by the Master.

XXXVIII.

Complainant excepts and objects to the conclusion of the Master (Report, page 50), in effect, that Green's declarations are of no value because "made for the purpose of creating evidence in favor of the declarant after he has become appreciative of the consequences resulting from a change of domicile"; because there is nothing whatever in this record to justify the inference that Green's motives were fraudulent, in fact or in law, and because motives of tax avoidance or lessening are wholly immaterial.

XXXIX.

Complainant excepts and objects to the conclusion of the Master, in effect, that the declarations of Green must be disregarded and given no weight, since they were inspired by selfish motives (Report p. 49); because Green had the absolute right to re-

tain his Texas domicile from any honest motives whatever, and his declarations, in the absence of actual or legal fraud, were of the highest evidential value, because of their frequency, consistency, and sincerity, and their forthright nature; and because his motives, even if conceded to be selfish, were wholly immaterial.

XL.

Complainant excepts and objects to the statement of the Master (Report page 16) that "evidently the Texas case and the findings of fact requested by her counsel were prepared with this local law of the State in mind"; because the evidence introduced in behalf of Texas and the findings of fact requested by her counsel do not justify the inference that her case was prepared with any "local" law in mind; but, on the contrary, counsel for Texas frankly stated to the Master that the law of Texas on the subject of domicile was, in all essentials, the same as the general or common law prevailing in the other jurisdictions here concerned. The circumscribing of the Texas' case to the local law, merely, is wholly unwarranted and misleading.

XLI.

Complainant excepts and objects to the Master's failure to find that Green's domicile from 1911 to 1921 was in Texas, or that it was elsewhere! The Master having found that there was insufficient

evidence to show that Green ever intended to make New York his permanent home (Report, page 54), Texas is entitled to an affirmative finding that the domicile in that State continued, at least until 1921, when Green moved into the Round Hills residence. Otherwise, there would be a hiatus, leaving Green without a domicile at all during that period.

XLII.

Complainant excepts and objects to the weight seemingly given by the Master to the statement of Green to his attorney, in 1931, that he had no sentiment where his legal residence might be (Report, page 53); because this isolated instance is without legal significance and without probative value, in the light of the whole record, and is not to be taken too literally as the Master seems to have done.

XLIII.

Complainant excepts and objects to the findings of the Master (Report, page 52), as follows: "Thus, we have the actual abandonment of the Texas domicile of choice and the actual acquisition of a new home in Massachusetts"; because, without support in the evidence and contrary to even a fair preponderance of the evidence; and because the law requires such facts to be established by clear and satisfactory proof.

XLIV

Complainant excepts and objects to the finding (Report, page 52) that there was an actual abandonment of the Texas domicile and an actual acquisition of a new home in Massachusetts; because, there is not sufficient evidence in the record to show such abandonment or such acquisition, especially upon the vital element of intention.

XLV.

Complainant excepts and objects to the findings of the Master (Report, page 52), that "as a matter of fact, he (Green) had no actual abode or residence Texas (after 1921), and in law had abandoned his former home there"; because an actual abode or residence in Texas was not necessary for the retention of his home there; and abandonment could not be complete, without intention, and without both the fact and intention of acquiring a home in another place.

XLVI.

Complainant excepts and objects to the statement of the Master (Report, page 56), that "If, as counsel for the defendants say, we must disregard Green's early history, except in so far as it furnishes a historical background, and determine what was his actual domicile at death by considering

which of his three residences was the principal, predominant or permanent home, we arrive at the same end"; because in the nature of a finding that Green's early history is interesting only as a historical background; and because the Master has apparently accepted that theory in reaching his final conclusion; in the face of conclusive evidence that Green had formerly fixed and established a domicile in Texas, and in the face of the legal presumption, universally recognized, that such domicile continued and remained Green's home, until clear and satisfactory proof was adduced that such domicile had been abandoned, in fact and intention, and a new domicile acquired in one or more of the respondent States, *facto et animo;* the burden of proof on that issue being upon the Respondents, respectively.

XLVII.

Complainant excepts and objects to the inclusion by the Special Master of the photographs appended to his Report, for the following reasons:

(a) Such photographs have no legal significance and no probative force whatever in relation to any of the issues of the case.

(b) Such photographs are partial and incomplete, having been selected from many similar exhibits introduced at the hearings and on file in the cause.

(c) Such photographs are misleading or, at least, confusing; in that they portray, at most, residences,

interiors, and grounds potentially capable of use as homes, a fact conceded by complainant throughout the case.

(d) Such photographs have, at most, a comparative value, relating to the claims of Massachusetts and Florida, respectively; and, in such aspect, they reveal nothing to aid in resolving those conflicting claims. Either residence, at a glance, was potentially a home.

(e) Such photographs present a wholly inadequate and unfair (unwittingly, of course) picture of the residences and grounds portrayed; especially in this, that they fail to reveal the many public features attached to the Massachusetts residence, such as the hot-dog stands, the public bathing beach, the numerous road signs on the Round Hills estate, the radio station, the landing field, the old whaler "Morgan"; and the many other public features, contrasting with the Star Island estate. Those incongruous features which are indicia that the Round Hills estate was a proving or experimental ground, as Green himself characterized it, are abundantly shown by the testimony and by other photographic exhibits, and are necessary to a fair pictorial representation.

(f) Such photographs fail to reveal the many incongruities and bewilderments of the Round Hills estate, as shown by the evidence; features manifestly at variance with a home in its ordinary acceptation and in the legal sense; and, therefore, essential to a fair picture of the place.

(g) The Master, by selection, has limited and circumscribed the whole picture for the Court, and the effect of his method is to obscure and, perhaps to mislead. Only a fair consideration of all the exhibits will suffice for an adequate picture.

(h) Such photographs are not supportive, in any degree, of the theory the Master has adopted, nor of the conclusions he has reached; and, therefore, are without legal significance, if not wholly irrelevant.

XLVIII.

Complainant excepts and objects to the final conclusion of the Master (Report page 57) that the domicile of Green, at the time of his death, June 8, 1936, in fact and in law, was in the Commonwealth of Massachusetts; because:

(a) The finding is not supported by the evidence.

(b) A fair preponderance of the evidence shows that Green's domicile, at the time of his death, was in the State of Texas.

(c) The Commonwealth of Massachusetts has not, by clear and satisfactory proof, nor even by a fair preponderance of the evidence, rebutted the legal presumption that the domicile fixed and established by Green in Texas continued and remained his domicile at the time of his death; nor has any other party to this suit.

(d) The Master has thereby impliedly found that Respondents have fully discharged the burden of rebutting the presumption of continuance of the Texas domicile, by clear and satisfactory proof of abandonment and the acquisition of a new domicile; in the face of the evidence and contrary to at least a fair preponderance of the evidence.

(e) The Master (after having eliminated Texas upon the theory of abandonment, and New York because of insufficient evidence of intention to make a permanent home in that State) finding himself in a situation of perplexity, solved the question by, in effect, making his own choice between two residences of apparently equal claims, thus substituting his judgment for the choice of the decedent with whom it always rested. To state it differently, the Master has not exercised the judicial function of determining domicile, but of selecting one; whereas it is exclusively the province of a person to choose his own domicile, and the courts may properly do no more than determine, under all the evidence, where the person affected chose to make his domicile.

(f) The Master has made the case to turn and depend upon a comparison between a residence in Massachusetts and a residence in Florida, when the comparative claims of the two estates are so nearly equal, that it is impossible judicially to determine which, if either, was Green's true and permanent home; and when the evidence as a whole fairly discloses that Green himself had never made the choice

of either as his home, but both were seasonal residences, suited to the requirements of his health; and there is no basis in the evidence for concluding that the Massachusetts residence was the principal home and the Florida residence the secondary or subordinate one, as found by the Master—Report pp. 54-55.

XLIX.

Complainant excepts and objects to the Master's Report, in this: The Master, after having correctly found "that he (Green) had no close personal friends or associates in New York, and that the confinement resulting from this indoor life, bored him and made him unhappy," (Report 31), failed to apply the same criteria to Green's relationship to the Round Hills' estate. Those considerations evidently influenced the Master in finding that Green never had the intention to make New York his permanent home. The record abounds with evidence that in the later years of his life, Green lost practically all interest in Round Hills and was bored and unhappy there, as much so as in New York, and if that fact is to be a factor in determining that Green did not have his home in New York, at any time, the test should be applied also to Round Hills.

L.

In order of reference herein, it was expressly provided that "the findings, conclusions and recommendations of the Master shall be subject to consideration, revision or approval by the Court." The

Special Master has obligingly filed printed copies of the requested findings and supporting memoranda submitted to him by counsel for the respective parties. In the Texas memorandum, the following "Findings of Fact," on the issue of domicile, were requested:

I.

The decedent, Edward H. R. Green, died at Lake Placid, New York, on the 8th day of June, 1936 (R. 246, 3409). Green was born in London, England, on August 22, 1868 (N. Y. Ex. 96, R. 4396-7), a citizen of the United States, of American parents who were domiciled in Bellows Falls, Vermont (Mass. Exs. 367, 369, R. 6224, 6231; Texas Ex. 288, R. 2323-4, 2327). There is no evidence of record that this domicile of origin was abandoned or lost and any other domicile acquired by him prior to the acquisition of his Texas domicile. His domicile of origin, however, was permanently abandoned and lost when he went to Texas in 1892 and took up his residence and made his home there. The Vermont domicile was never resumed, nor was there ever any reverter thereto.

II.

Between the years 1892 and 1911, and during all that period, Green actually

lived and had his abode in Terrell, Kaufman County, Texas, and in Dallas, Dallas County, Texas; and by his wide and varied activities, national, state and local, and by his general habits of life, had established and fixed his permanent home and domicile in Texas, with his legal residence in Terrell.

III.

It is undisputed, and, therefore, found as a fact, that Green left Texas in 1910 or 1911 for New York City, at the urgent request of his mother, Mrs. Hetty Green, who was at that time of an advanced age and possessed of a large fortune, and for the sole purpose of assisting her in the care and management of her vast affairs, centering largely in that city.

IV.

There is no evidence in the record establishing, or from which it may be reasonably inferred, that when Green left Texas for New York he was without intention of returning to his Texas domicile. The burden of proof on this issue being upon Respondents, and not having been discharged, it is found that Green at the date and in the circumstan-

ces stated was not without intention of returning to Texas.

V.

The preponderance of the evidence shows and therefore it is found as a fact that when Green left Texas for New York, he expected his absence to be temporary; and it is further found that when Green left Texas for New York it was his intention to return to Texas to live, to resume his residence, and to retain his domicile in that State, whenever the exigencies of his mother's business would permit. Green's removal to New York to assist his mother in her affairs was therefore neither with the intention of abandoning Texas as his domicile nor was it made with the intention of acquiring a new domicile in the State of New York or elsewhere. (R. 2438, Tex. Exs. 306-315, R. 2428-2443, 53, 68, 178, 199, 270, 271, 726, 4489, 4490, 3365, 2936, 2943, 2944, 2951, 3469, 3470, 3475).

VI.

From a preponderance of the evidence it appears and, therefore, it is found as a fact that the intention of Edward H.

R. Green to retain his home and legal residence in Texas, as manifested by his acts, declarations and attitudes, persisted and continued to the day of his death in June, 1936.

VII.

From a preponderance of the evidence it is found that there was never, in fact and intention, any abandonment by Edward H. R. Green of his Texas home and residence; but the same continued to his death, without change. By consistent and repeated oral and written declarations, by affidavits and under oath in judicial proceedings from 1894 to the date of his death, Green manifested and expressed his unmistakable intention of preserving his Texas domicile.

VIII.

From a preponderance of the evidence it is found that the frequent and prolonged absences of Green from the State of Texas, and the fact that for several years prior to his death he had not maintained a place of abode within the State, did not work an abandonment of the domicile therefore acquired by him with-

in the State of Texas; nor do these facts convincingly show any intention to abandon such domicile. The financial circumstances in which Green was situated after 1916; the fact that his business office was maintained in New York City, requiring his physical presence, and that the paper evidences of his intangibles were situated there (R. 2527); his cosmopolitan nature, and the condition of his health, particularly in the last 20 years of his life, materially restricting his movements and determining his seasonal whereabouts, and causing him to search for favorable climatic conditions, reasonably explain such absences and the lack of an abode in Texas.

IX.

It appears from a preponderance of evidence and, therefore, it is found as a fact that none of the residences and places of abode of Edward H. R. Green in the States of New York and Florida and the Commonwealth of Massachusetts, respectively, ever became his home and legal residence; but all such abodes failed, for lack of intention, to become his domicile.

X.

From a preponderance of the evidence it is further found that Edward H. R. Green died domiciled in the State of Texas.

XI.

It is further found that Green, in fact and intention, never established a permanent home nor acquired a domicile of choice in any other state nor elsewhere than in the State of Texas.

XII.

Specifically it is found that while Green, during the period from 1911 to June, 1936, the date of his death, occupied and lived in several places in the City of New York, viz: 5 W. Ninetieth Street, the Waldorf-Astoria Hotel, and the Sherry-Netherlands Hotel, he made neither of these places of abode, in fact and in intention, his permanent home; nor was either his domicile at death nor at any time prior thereto. He was not domiciled in the State of New York at any time.

XIII.

It is further found that while Green, during the period from 1921 to June, 1936, possessed and maintained a large estate, commonly referred to as his summer home, at Round Hills, South Dartmouth, Massachusetts, with an expensive and elaborately furnished mansion, in which he lived with his wife seasonally, for about five months in each year, it was not, in fact and intention, his home and permanent residence. The Round Hills estate was never the place of Green's domicile, nor was he ever domiciled in the Commonwealth of Massachusetts.

XIV.

About the year 1925 or 1926, Green built an expensive house on Star Island, Miami Beach, Florida, commonly referred to as his winter home. It, too, was elaborate, beautifully decorated and furnished, and was occupied by Green and his wife seasonally, for about four or five months in each year. But that residence was not, in fact and intention, his home and permanent residence. The Star Island house was never the place of Green's domicile, nor was he ever domiciled in the State of Florida.

The following "Conclusions of Law" were requested, also:

I.

The decedent Green, in fact and intention, was domiciled within the State of Texas during the period from 1893 to 1910, inclusive, with his home and legal residence in Terrell, Kaufman County, Texas. Such domicile was firmly established and fixed, with all the permanency required by the law.

II.

It is a presumption, applicable to this case, that the Texas domicile continued unless and until changed by abandonment and by the acquisition of an actual residence in some other jurisdiction, coupled with the intention of making such last acquired residence, a permanent home. This presumption is rebuttable, but the burden of proof is upon the party asserting the change; in this case, the several Respondents, respectively. The burden has not been discharged, and the presumption must be given full force and effect here.

III.

Giving effect to the presumption aforesaid, and in the absence of clear and satisfactory proof of a change of domicile, on the whole record, it is concluded as a matter of law from all the facts that the domicile of Green, at death, remained unchanged and was at such date within the State of Texas, at Terrell, in Kaufman County.

IV.

Edward H. R. Green, at death, was not domiciled in the State of Vermont.

V.

Edward H. R. Green, at death, was not domiciled in the State of New York.

VI.

Edward H. R. Green, at death, was not domiciled within the Commonwealth of Massachusetts.

VII.

Edward H. R. Green, at death, was not domiciled within the State of Florida.

VIII.

As the State of domicile at the time of Green's death, the State of Texas is exclusively entitled to collect and receive the tax upon the rights of transfer, succession or inheritance to all the intangible property of his estate wherever located.

All such conclusions of law were rejected by the Master. Only the first two of the requested findings of fact (and they by inference only) were accepted and adopted by the Master. We submit that all parties hereto are entitled to a clearcut, unequivocal finding that Green's domicile of origin, Bellows Falls, Vermont, was abandoned and lost, and that there was never any resumption thereof or reverter thereto. It is undisputed. We further submit that, under the overwhelming weight of the evidence, Texas is entitled to a positive finding that Green's permanent home and domicile, between the years 1892 and 1911, and during all that period, was established and fixed in Texas, and his legal residence was in Terrell.

As to the remainder of the requested findings, in behalf of Texas, III to XIV inclusive, we submit that a fair preponderance of the evidence sustains each and every one of them.

Under the reserved and customary power of the Court to supervise and revise the findings and con-

clusions of the Master, we respectfully ask that the foregoing findings, in substance at least, be adopted by the Court in lieu of the facts found by the Master. It is likewise asked that the Court adopt the Conclusions of Law, as presented to the Master in our printed memorandum. (Texas' Requested Findings, pp. 11-16.)

Complainant excepts and objects to the action of the Special Master in failing to find that the domicile of origin of Edward H. R. Green, in the State of Vermont, was permanently abandoned and lost when he went to Texas in 1892, or shortly thereafter, and was never resumed nor was there ever any reverter thereto; because those facts are established by the undisputed evidence.

Complainant excepts and objects to the failure and refusal of the Special Master to find, as requested by Complainant, that: "Between the years 1892 and 1911, and during all that period, Green actually lived and had his abode in Terrell, Kaufman County, Texas, and in Dallas, Dallas County, Texas; and by his wide and varied activities, national, state and local, and by his general habits of life, had established and fixed his permanent home and domicile in Texas, with his legal residence in Terrell"; because those facts are established by clear and satisfactory proof and by the overwhelming weight of the evidence.

Complainant excepts and objects to the failure and refusal of the Special Master to find as facts all requested findings, III to XIV inclusive, presented

to him by Complainant; because all such facts were established by a fair preponderance of the whole evidence.

Complainant excepts and objects to the failure and refusal of the Special Master to adopt or make substantially all the Conclusions of Laws, I to VII, inclusive, as presented to him by Complainant; because each and all such conclusions are correct and compelled from a fair preponderance of the evidence and the facts proven.

In connection with the above exceptions, we call the attention of the Court to the appendix to our Memorandum to the Master, which contains a fair and concise history and summary of the life and activities of Green, in lieu of the impracticable method of attempting to give detailed references to the record under each separate finding. The material facts supporting the requested findings will be there found.

Respectfully submitted,

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CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term, 1938.

No. 11, ORIGINAL.

THE STATE OF TEXAS,

Complainant,

against

THE STATE OF FLORIDA, THE COMMONWEALTH OF MASSACHUSETTS, THE STATE OF NEW YORK, MABEL HARLOW GREEN and HETTY SYLVIA ANN HOWLAND GREEN WILKS,

Respondents.

EXCEPTIONS OF RESPONDENT, THE STATE OF NEW YORK, TO THE REPORT OF THE SPECIAL MASTER.

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THE STATE OF FLORIDA, THE COMMONWEALTH OF MASSACHUSETTS, THE STATE OF NEW YORK, MABEL HARLOW GREEN and HETTY SYLVIA ANN HOWLAND GREEN WILKS,
Respondents.

EXCEPTIONS OF RESPONDENT, THE STATE OF NEW YORK, TO THE REPORT OF THE SPECIAL MASTER.

The State of New York, Respondent herein, presents to the Court its exceptions to the Report heretofore filed by John Spalding Flannery, Special Master.

Throughout this Bill of Exceptions citations are made to the Digest of the evidence prepared by the Special Master, except in cases where (a) such Digest

does not contain the material from the Record to which it is desired to direct attention or (b) such Digest contains an incomplete or inaccurate statement of the material from the Record to which it is desired to direct attention, in which cases citation is made to the official transcript of the Record.

Where no citations are given in support of exceptions it is because the Record does not contain anything on the subject or the matter is so general in its nature that citations to the Record are not feasible.

Abbreviations used herein are as follows: R., Report of the Special Master; D., Digest of the Evidence; Rec., Official Transcript of the Record.

1.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that in 1887 Green's mother sent him from New York City to Chicago to look after her business interests there, that in 1892 he returned to New York and she then sent him to Texas to look after her business interests there, which consisted of her investment in the Texas Midland Railroad, and that in 1911 he again returned to New York to look after her business interests in New York City.

Tex. Ex. 288, D. 66-7; Rec. 297.

2.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special

Master failed to find the facts in relation to Green's whereabouts from 1910 to 1936, inclusive, as set forth in the Narrative Time Table submitted on behalf of the Respondent Wilks with her requested Findings of Fact and Conclusions of Law.

3.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that before moving to New York City from Texas in 1911 Green disposed of practically all of his business interests in Texas.

D. 6; D. 7.

4.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that when Green left Texas in 1911 and moved to New York City, he intended to and did leave Texas permanently.

R. 28 to 32, inc.; R. 51; Mass. Ex. 13, D. 32; Rec. 271; Mass. Ex. 14, D. 32; D. 27; D. 16, Rec. 398; Rec. 190; D. 242; N. Y. Ex. 95, Rec. 4393-4; N. Y. Ex. 157, D. 187; Tex. Ex. 288, D. 67; Mass. Ex. 191½, D. 236; Mass. Ex. 38, Rec. 4910-1; N. Y. Ex. 145, Rec. 4578-9; D. 205.

5.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Mas-

ter failed to find that Green became domiciled in the State of New York after he moved to said State from Texas in the year 1911.

6.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that Walter H. Marshall, Green's secretary, made his home in New York City from the time he came there with Green in 1911 until the time of Green's death.

D. 240; Rec. 5555-6.

7.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that Green's friends and business associates regarded New York City as his home.

N. Y. Ex. 148, D. 186; Mass. Ex. 10, Rec. 346-7; Mass. Ex. 7, D. 7; N. Y. Ex. 236, D. 201; Mass. Exs. 19, 20, D. 42; N. Y. Ex. 228, D. 197.

8.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that Charles W. Pierson, of New York City, was Green's general personal and business attorney and that Dr. Henry S. Pascal, of New York City, was Green's personal and family physician.

Rec. 2268-9; D. 45; Rec. 2817; D. 165; Rec. 7348-9.

9.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that Green had a private unlisted telephone in his apartment during the period that he lived at the Waldorf-Astoria Hotel in New York City.

D. 119.

10.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that Green's private unlisted telephone in his apartment in the Sherry-Netherland Hotel in New York City was not discontinued until after his death.

Rec. 3052.

11.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that the automobiles kept by Green in New York City were kept on "live" storage on a year-round basis, ready for service at any time, day or night, and were used frequently.

D. 115; D. 116; D. 160.

12.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that during the World War Green

subscribed to between three and three and one-half millions in Liberty bonds through New York City banks and organizations.

D. 155.

13.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that the affidavits made by Green in 1916 for the purpose of "swearing off" the personal property assessment in the City of New York falsely and erroneously stated that Green was not and never had been a resident of the City of New York or the State of New York, and that he had been since 1893 and still was a resident of Texas, that his residence address was 503 Pacific Avenue, Terrell, Texas, that for twenty-three years last past he had been President and General Manager of the Texas Midland Railroad (Rec. 190; Mass. Ex. 7, Rec. 142; Tex. Ex. 373, Rec. 2868), and that he was Chairman of the Republican State Executive Committee of Texas for eight consecutive years beginning in or about the year 1896 (Rec. 450-1), and also because the Special Master failed to find that the whole assessment procedure in New York City in respect to personal property at that time was asinine (Rec. 4284-8).

14.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that on numerous occasions when Green was living in the Waldorf-Astoria and Sherry-

Netherland Hotels, in New York City, he referred to them, respectively, as his home.

N. Y. Ex. 103, D. 181; D. 165; N. Y. Ex. 108, Rec. 4460-1; D. 181; Mass. Ex. 44, D. 206; Mass. Ex. 11, D. 15; N. Y. Ex. 86, Rec. 3567-8; D. 198; N. Y. Ex. 60, D. 134.

15.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that Green's protegees spent portions of their vacations with him in New York City.

Rec. 4146; D. 214; Rec. 5768; Rec. 6776; Mass. Ex. 194, Rec. 5290-1.

16.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that all of Green's personal correspondence files were kept at his office in New York City until he opened the Star Island house in 1927, after which the files were taken from place to place with him as he traveled, and that he had duplicate steel cabinets at Round Hills and Star Island in which he kept his correspondence during his sojourns at those places.

Rec. 5655; D. 251; D. 253.

17.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that an assessment has been made

against Green for income taxes in New York State, as a resident, from 1919 up to the time of his death, in the amount of $920,827.35.

D. 85.

18.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that Green always returned to his home in New York after visiting Texas, Massachusetts, and Florida, except during the last three years of his life when, by advice of counsel, he was an involuntary exile from New York.

D. 214; N. Y. Ex. 213, Rec. 4780; Mass. Ex. 29, Rec. 1240-1; N. Y. Ex. 129, D. 183; N. Y. Ex. 131, D. 183; N. Y. Ex. 319, D. 289; N. Y. Ex. 112, Rec. 4470; Rec. 8216-7; N. Y. Ex. 147, D. 185-6.

19.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that Hetty Green expressed the wish that Green would build a monument to her at Round Hills.

D. 195.

20.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that the Round Hills house was con-

structed by Green for other purposes than a home and he was using it until he had developed Round Hills for a memorial for his mother and his ancestors.

D. 199-200.

21.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that Green had his name cut from the stone work of the Round Hills house after it had been placed thereon by order of the architect, saying that he did not wish his name to appear upon property owned by his mother or his ancestors.

D. 202-3; D. 199; D. 200.

22.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that Green was unwilling to have a tablet with his name on it placed on the lands at Round Hills that were owned jointly by him and his sister.

D. 199.

23.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that Green had a red Neon sign, made of letters twelve feet in height, placed on top of the Round Hills house as an aviation beacon.

N. Y. Exs. 210, 218, 219, 220, D. 252.

24.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that it was necessary to heat the Round Hills house in winter in order to protect it from the elements.

D. 95; D. 247; Rec. 6819; D. 243.

25.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that by far the larger percentage of the electrical outlets in Green's house at Round Hills were concealed and intended for use when the building should be converted into an institution.

N. Y. Exs. 91, 91-A, 91-B, D. 174; D. 175; Rec. 7826; D. 310; Rec. 7143-5; Mass. Ex. 445, D. 330; D. 176.

26.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that subsequently to the first few years after the Round Hills house was built Green's sister, Mrs. Wilks, paid one-half of the taxes on it.

Rec. 3493; D. 128.

27.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that Green was not sufficiently inter-

ested in the Howland ancestral home at Round Hills to have it put in repair.

D. 179; D. 311; D. 251; Rec. 5555; D. 252; D. 302; D. 46; Rec. 4406-8.

28.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that, in 1925, after the foundation was constructed, Green abandoned the erection of a whaling museum at Round Hills because he thought the Round Hills house was better suited for that purpose, it being his intention to erect a smaller house on the Round Hills property for his use while spending the summers there.

D. 313; Fla. Exs. 28, 29, D. 316; D. 328; D. 315; Fla. Ex. 355, D. 396; D. 317.

29.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that Green discontinued his interest in photography and closed his photographic laboratory at Round Hills in the year 1928.

D. 305.

30.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that Green did not take to Round Hills any of the letters written to him by his mother, but kept them in New York City.

Rec. 4813-6; Rec. 4385.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that Round Hills was a summer home in the ordinary sense of the term, and was so regarded by Green and his friends and associates, and was never intended by him to be his domicile, and that it had been used as a summer recreation place by his mother and by his great aunt, Sylvia Ann Howland, before him.

Tex. Ex. 349, D. 93; D. 298; Rec. 342; Rec. 343-4; Rec. 417; D. 38; Tex. Ex. 29, Rec. 1302; D. 90; Tex. Ex. 375, Rec. 2873; D. 113; Rec. 2951; D. 116; D. 175; D. 105; Rec. 8276; Rec. 3710; Rec. 5643-4; Rec. 5081-2; Rec. 6700-2; D. 317; Rec. 6716-8; Rec. 6446; D. 117; D. 162; D. 173; Rec. 4338-9; Mass. Ex. 48, D. 163; Tex. Ex. 377, Rec. 2876; N. Y. Ex. 119, Rec. 4494; N. Y. Ex. 135, Rec. 4549-50; N. Y. Ex. 136, Rec. 4553-4; Mass. Ex. 113, D. 273-4; Mass. Ex. 123, Rec. 5264; N. Y. Ex. 138, D. 184; N. Y. Ex. 120, Rec. 4497; N. Y. Ex. 121, Rec. 4500; N. Y. Ex. 125, D. 183; N. Y. Ex. 126, Rec. 4519; Tex. Ex. 387, D. 98; N. Y. Ex. 217, Rec. 4791; Mass. Ex. 236, D. 238; Mass. Ex. 237, D. 238; Fla. Ex. 363, D. 398; N. Y. Exs. 142, 143, 144, Rec. 4571-4; N. Y. Ex. 122, Rec. 4503; D. 325; N. Y. Ex. 127, D. 183; N. Y. Ex. 128, D. 183; Tex. Ex. 294, D. 73; N. Y. Ex. 136, Rec. 4553; N. Y. Ex. 137, Rec. 4556-7; Rec. 2730-1; D. 95-6; Rec. 2803-4; Mass. Ex. 147, D. 162; Mass. Ex. 147, Rec. 6027; N. Y. Exs. 211, 212, Rec. 4777-9; D. 90; Rec. 6508-9; Tex. Ex. 10, D. 40.

32.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that everything Green did while in Massachusetts indicated a seasonal vacation and relaxation from physical and mental effort.

33.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that Green and his secretaries and servants often referred to Round Hills as "the farm" or as his country place.

Rec. 870; Mass. Ex. 72; D. 232; Mass. Ex. 86, Rec. 5246; Mass. Ex. 74, D. 232; N. Y. Ex. 138, Rec. 4560; Fla. Ex. 363, D. 398; N. Y. Ex. 151, Rec. 4594; N. Y. Ex. 111, D. 182; N. Y. Ex. 116, Rec. 4477; N. Y. Ex. 136, Rec. 4553.

34.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that the grounds at Round Hills were used by the public in summer in much the same manner as an amusement park.

D. 245; Rec. 6656-7; D. 196; Mass. Ex. 373, D. 245; D. 295; Tex. Exs. 339 to 342, inc., D. 327; Texas Exs. 337, 338, D. 327; Rec. 7096-7101; Fla. Exs. 41 to 45, inc., D. 341; D. 341; D. 269; Mass. Ex. 271, D. 285; Fla. Ex. 366, Rec. 9559-61.

35.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that on different occasions when Green was taken seriously ill at Round Hills, his family physician in New York City, Dr. Henry S. Pascal, was sent for and attended him at Round Hills.

D. 165; Rec. 4182.

36.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that Green had been advised repeatedly, both by his personal general attorney, Charles W. Pierson, of New York City, and his local Massachusetts counsel, John M. Bullard, of New Bedford, that, so far as Massachusetts income taxes were concerned, it made no difference if he spent less or more than six months of the year in that state.

Mass. Ex. 71, D. 215; Mass. Ex. 287, D. 225; Rec. 7045; Mass. Ex. 288, D. 225.

37.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that it was the duty of Henry F. Long, as Commissioner of Corporations and Taxation of the Commonwealth of Massachusetts, to enforce the income tax law of that Commonwealth.

D. 338.

38.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that no assessment for income taxes was ever made against Green by the Commonwealth of Massachusetts.

D. 338.

39.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that Green gave up his memberships in Massachusetts social organizations long prior to his death, but maintained his memberships in New York social organizations as long as he lived.

Rec. 5650-1; Fla. Exs. 23, 24, D. 257; D. 110; D. 118; N. Y. Exs. 37, 38, D. 128; D. 133; N. Y. Ex. 47, D. 133; N. Y. Exs. 57, 59, D. 134, Rec. 3294; D. 137, N. Y. Ex. 79, D. 137; D. 134; N. Y. Exs. 27, 28, D. 126.

40.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that Green discontinued his contributions to the New Bedford Community Welfare Fund after 1928.

Rec. 3535; Mass. Ex. 59-A, D. 143-4.

41.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special

Master failed to find that Green's name was never on a jury list at South Dartmouth, Massachusetts.

Rec. 6818.

42.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that on numerous occasions subsequently to 1921 Green specifically denied that he was a resident of Massachusetts.

D. 88-9; D. 89; D. 95; N. Y. Exs. 142, 143, 144, D. 185, Rec. 4571-4; D. 94; D. 339; D. 328; Mass. Ex. 85, Rec. 5908; Tex. Ex. 290, D. 73; Tex. Ex. 18, 18-A, D. 49; Rec. 7132; Mass. Ex. 81, D. 217.

43.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that Green's personal and family physician, Dr. Henry S. Pascal, of New York City, in 1923, advised him it would be necessary for him to spend his winters in the South, or a warmer climate, on account of his health.

Rec. 4167; Rec. 4169; Rec. 4181-2; D. 166; D. 263.

44.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that Star Island was a winter

home in the ordinary sense of the term and was so regarded by Green and his friends and associates, and was never intended by him to be his domicile.

D. 348; D. 350; D. 381; D. 382; Rec. 9026-7; D. 382; Rec. 8115-6; Rec. 8141-2; Rec. 8112; D. 348; Fla. Ex. 333, Rec. 9397; Fla. Ex. 217, D. 379; Fla. Ex. 335, D. 389; Mass. Ex. 211, D. 237; D. 162; Tex. Ex. 387, D. 98; Tex. Ex. 10, D. 40.

45.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that in his latter years Green devoted his activities to building up Star Island, while his interest in Round Hills declined.

D. 91.

46.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that, at his special instance and request, Green was buried in the burial plot at Bellows Falls, Vermont, which had been in his family for more than one hundred years, and contained the graves of his mother, father, grandmother, grandfather, and great great grandmother.

D. 39-40; D. 251; D. 141; Mass. Ex. 164, D. 255; D. 386; N. Y. Ex. 224, D. 196, Rec. 7698-9; N. Y. Exs. 206 to 209, inc., D. 193.

47.

The Respondent, The State of New York, excepts to that part of the Special Master's Report, on page 20, wherein he finds that Green joined clubs, societies and social organizations in every community where he dwelt but never attended them.

The Special Master should have found that, in most instances, he did not attend the clubs, societies and social organizations to which he belonged, but that the Union Club, one of the leading social clubs in the City of New York, was an exception.

Rec. 9347-8.

48.

The Respondent, The State of New York, excepts to that part of the Special Master's Report, on page 33, wherein he finds that a portion of Green's stamp collection was kept in his apartment in New York City, and to that part of his report, on page 38, wherein he finds that the bulk of Green's stamps was kept in the vault in the basement of the Round Hills house.

The Special Master should have found that more than eighty percent of his stamp collection was kept in his apartment in New York City.

R. 34; R. 42.

49.

The Respondent, The State of New York, excepts to that part of the Special Master's Report, on page

33, wherein he finds that Green's interest in his stamp collection had been slight since 1927.

The Special Master should have found that stamp collecting was Green's principal hobby and that he always maintained his interest in it.

Rec. 971-2; Rec. 3451; Rec. 3536; D. 157; D. 165; D. 166; Rec. 4804; D. 252; Rec. 8267; Rec. 8274; Rec. 8657; Rec. 8662-3; D. 373; Rec. 9030-1; Rec. 6318; Rec. 6315-6; D. 270; D. 294; Rec. 9044; D. 154; Rec. 5567; D. 252; N. Y. Ex. 85, Rec. 3542-3.

50.

The Respondent, The State of New York, excepts to that part of the Special Master's Report, on page 38, wherein he finds that Mrs. Mary Stafford lived at Round Hills each year from 1920 to 1927.

The Special Master should have found that Mrs. Stafford lived with the Greens at the Waldorf-Astoria Hotel in New York City, from 1920 to 1927, and, during that period, spent some time with them at Round Hills during the summers.

Rec. 4961-3; Rec. 4972-3; D. 214; D. 164.

51.

The Respondent, The State of New York, excepts to that part of the Special Master's Report, on page 33, wherein he finds that Green, in the last three years of his life, avoided New York because of efforts to

serve him in certain litigation against the Directors of the Chase National Bank.

The Special Master should have found that, in the last three years of his life, Green, on the advice of his personal general counsel in New York City, avoided New York because of efforts to serve him in certain litigation against the Directors of the Chase National Bank.

D. 124; N. Y. Ex. 66, Rec. 3313; N. Y. Ex. 67, Rec. 3315; N. Y. Ex. 68, Rec. 3318; N. Y. Ex. 69, Rec. 3321-2; N. Y. Ex. 70, Rec. 3324-5; N. Y. Ex. 71, D. 135; N. Y. Ex. 72, Rec. 3328-9; N. Y. Ex. 73, Rec. 3331-3; N. Y. Ex. 74, Rec. 3334-5; N. Y. Ex. 75, Rec. 3336-7; N. Y. Ex. 76, D. 136; Rec. 5558; D. 95.

52.

The Respondent, The State of New York, excepts to that part of the Special Master's Report, on page 35, wherein he finds that in August, 1917, Green determined to develop the Round Hills property into a great estate and build there a monumental home.

The Special Master should have found that in August, 1917, when Green first considered developing the Round Hills farm, he intended to build a dock there at which to moor his steam yacht, the "United States," and a water tower to supply the yacht with water, and intended to live on the yacht during the summer seasons, using the farm for recreational purposes and to raise fresh vegetables and other supplies for the yacht.

D. 306; D. 307; D. 308; Rec. 6582-3; Rec. 6574-6.

53.

The Respondent, The State of New York, excepts to that part of the Special Master's Report, on page 38, wherein he finds that after the winter of 1921-22, a skeleton staff of seven or eight servants was left in the Round Hills house in the Winter, and the remainder went back and forth between Round Hills and Florida.

The Special Master should have found that in the winter of 1921-22 a full complement of servants was kept at Round Hills and that thereafter until the Star Island house was opened in 1927 the servants at the Round Hills house were employed for the summer season only, with the exception of a few who remained the year round as caretakers, but after the Star Island house was opened, most of the servants employed at the Round Hills house during the summer season were taken to Florida for the winter season.

Rec. 6815; N. Y. Ex. 136, Rec. 4552-4; N. Y. Ex. 137, Rec. 4556-7; Rec. 5540-1; Rec. 2803; D. 326-7.

54.

The Respondent, The State of New York, excepts to that part of the Special Master's Report, on page 39, wherein he finds that the Round Hills house was kept heated throughout the Winter, but the furnishings were covered and protected.

The Special Master should have found that each year when Green left Round Hills, at the close of the sum-

mer season, the house was closed, storm doors were put on and the windows were boarded up, the furniture and pictures were covered with cloths, the silverware was put away in a safe, the china was wrapped up and put away, the linen was put away, the flowers that had been used in the house were put back in the greenhouses, the main kitchen was closed up so that it could not be used, and the draperies and hangings were covered with cloth bags.

Rec. 2776-7; Rec. 2801-2; D. 243; Rec. 5539-49.

55.

The Respondent, The State of New York, excepts to that part of the Special Master's Report, on pages 41-2, wherein he finds that all of Green's personal and intimate belongings remained at Round Hills until his death.

The Special Master should have found that all of the letters written to Green by his mother, whose memory he revered, and the major portion of his stamp collection, which constituted his principal hobby, were kept in New York City until his death, and that other of his belongings of a personal and intimate nature were kept both at Star Island and Round Hills.

R. 33; R. 34; R. 42; Rec. 4813-6; Rec. 4385; Fla. Ex. 118, D. 360; Rec. 8168-9; Rec. 8137-4; Rec. 8142-3; Rec. 8150.

56.

The Respondent, The State of New York, excepts to that part of the Special Master's Report, on page 42, wherein he finds that, in 1915, Green had his yacht

"United States" taken out of the State of Massachusetts to avoid taxes.

The Special Master should have found that, in 1919, Green had his yacht "United States" taken out of the Commonwealth of Massachusetts to avoid taxes, but that such taxes were those levied on nonresidents on the basis of the physical location of the yacht and had nothing to do with Green's domicile. If Green had been a resident the yacht would have been taxable in Massachusetts without regard to its physical location.

Mass. Ex. 79-A, R. 5108-11.

57.

The Respondent, The State of New York, excepts to that part of the Special Master's Report, on page 42, wherein he finds that Green never openly acknowledged Round Hills as his legal residence, invariably giving as his reason that he wished to avoid paying taxes there.

The Special Master should have found that Green always claimed that Round Hills was not his legal residence, and sometimes stated that he did not wish to establish his legal residence in Massachusetts because of the tax laws of that Commonwealth.

See Exception No. 42 and Citations thereunder.

58.

The Respondent, The State of New York, excepts to that part of the Special Master's Report, on page 21, wherein he finds that aside from Green's railroad ac-

tivities in Texas between 1892 and 1911 he was never in any active business or devoted to the making of money, for the reason that said finding is not sustained by the evidence, *e. g.*, R. 25-6; R. 28; R. 29-31; R. 35.

The Special Master should have found that Green was very active in business in Texas and New York and gave the same his personal attention until he was incapacitated in 1921, after which his business affairs were principally conducted through his office in New York City, and that he was devoted to the making of money throughout his life.

59.

The Respondent, The State of New York, excepts to the following statement found on page 51 of the Report of the Special Master:

> "After his mother's death in 1916, his marriage in 1917 and he had come into the full enjoyment of his fortune and was free from restraint, Green might have returned to Texas and reestablished himself in an actual permanent home there. Instead of doing so, he relinquished his nominal abode which he had obtained by renting a room in the house of Mrs. Jarvis in Terrell, which he never occupied, and in the visits he made to Texas in subsequent years to attend the meetings of his Railroad Directors, to vote, or for the purpose of taking medical treatment, he stopped at hotels or at the Buie Sanitarium at Marlin."

The room in Texas was given up in 1914. What Green might have done after his mother's death and his marriage is purely speculative. The fact is that he continued to make his home in New York City as he had done since 1911.

D. 203; Mass. Ex. 365, R. 6220-2.

60.

The Respondent, The State of New York, excepts to that part of the Special Master's Report, on page 21, wherein he finds that Green's income from 1917 on was from $200,000 to $1,200,000, for the reason that it is inaccurate.

The Special Master should have found that Green's annual income from 1917 on ranged from $1,453,213.43 to $2,191,578.87.

D. 129.

61.

The Respondent, The State of New York, excepts to that part of the Special Master's Report, on page 29, wherein he finds that Green became a director of the Seaboard National Bank on July 7, 1918, for the reason that such findings is not sustained by the evidence.

The Special Master should have found that Green became a director of the Seaboard National Bank on July 7, 1910.

D. 157.

62.

The Respondent, The State of New York, excepts to that part of the Special Master's Report, on page 32, wherein he finds that Green, during the latter half of 1917, lived on the "United States" anchored off West Eighty-sixth Street, New York City, for the reason that such finding is not sustained by the evidence.

The Special Master should have found that after his marriage on July 10, 1917, Green spent several weeks cruising on the "United States" on Long Island Sound and then went to Round Hills, after which he returned on the yacht to New York and then went on a cruise to Texas, from which he returned to New York just before Christmas and lived at Five West Ninetieth Street for a couple of weeks, including Christmas of 1917 and New Years of 1918.

R. 111; R. 114; R. 206-7; R. 112.

63.

The Respondent, The State of New York, excepts to that part of the Special Master's Report, on page 33, wherein he finds that when Green moved from the Waldorf-Astoria Hotel to the Sherry-Netherland Hotel in New York City, in 1929, he wanted to preserve the atmosphere of the old Waldorf, on the ground that such finding is not adequate.

The Special Master, in addition to and enlargement upon his finding, should have found that Green personally selected the furniture which he desired to have moved, which included all of the furniture of his bedroom suite and office; that he requested that the rose-colored damask draperies in the Waldorf-Astoria be removed to the Sherry-Netherland, where they were hung in the large living room; that Green was not anxious to move but thought that by going to the Sherry-Netherland where he would be with the people who had been at the Waldorf-Astoria, he would feel much more at home; that he wanted to take some of the atmosphere of the old Waldorf with him and, as it

was intended to render as much as possible the same type of service at the Sherry-Netherland as had been given at the Waldorf-Astoria, he thought he would feel very comfortable there.

Rec. 4431-5; Rec. 4439-42.

64.

The Respondent, The State of New York, excepts to that part of the Special Master's Report, on page 33, wherein he finds that the Greens had no dining room and Green ate at his desk or on a card table at the Sherry-Netherland Hotel in New York City, for the reason that such finding is not sustained by the evidence.

The Special Master should have found that the Greens had a dining room and used the regular private dining service supplied by the Sherry-Netherland Hotel when they lived there.

Rec. 8273; Rec. 9477; D. 169; N. Y. Ex. 13, Rec. 3089-93; N. Y. Ex. 102, D. 180; D. 181.

65.

The Respondent, The State of New York, excepts to that part of the Special Master's Report, on page 33, wherein he finds that during the last ten years of Green's life his apartment in New York was used as a temporary sojourning place on his trips North and South, for the reason that such finding is not sustained by the evidence.

The Special Master should have found that during the last ten years of his life Green lived in the Wal-

dorf-Astoria and Sherry-Netherland Hotels in New York City in the same manner that he had lived in the Waldorf-Astoria for the preceding eight years, except that during the last three years of his life he stayed away from New York City on advice of counsel, and that his principal absences from New York City were for the purpose of visiting his summer place in Massachusetts and his winter place in Florida.

66.

The Respondent, The State of New York, excepts to that part of the Special Master's Report, on page 54, wherein he finds that there is nothing in the correspondence between Green and his attorney, Charles W. Pierson, of New York City, indicating that he ever regarded himself as a resident of New York for the reason that it is a negative finding, is unwarranted and unduly colors the findings to the prejudice of the Respondent, The State of New York. If any finding of this character is appropriate, it should be that there is nothing in the correspondence between Green and his attorney, Charles W. Pierson, of New York City, indicating that he ever regarded himself as a resident of New York, Massachusetts or Florida.

67.

The Respondent, The State of New York, excepts to the following statement found on page 54 of the Report of the Special Master: "In a sworn statement to the taxing officials of New York, he declared that he was not and never had been a resident of

New York", for the reason that such statement gives unwarranted color to the Report in view of the fact that it was made for the purpose of avoiding personal property taxes in New York City and therefore is not entitled to weight. It was made for the purpose of creating evidence in favor of the declarant after he had become appreciative of the consequences resulting from a change of domicile to New York (See Special Master's Report, page 50, fourth full paragraph).

68.

The Respondent, The State of New York, excepts to that part of the Special Master's Report, on page 35, wherein he finds that from 1918 to 1921 the development of the Round Hills property was Green's principal occupation, for the reason that such finding is not sustained by the evidence.

The Special Master should have found that from 1918 to 1921 Green carried on his business affairs in New York City in the same way that he had done for many years previously, and that although he spent the summers at Round Hills, while there he made weekly business trips of several days duration to New York. While at Round Hills he gave attention to developments there.

69.

The Respondent, The State of New York, excepts to that part of the Special Master's Report, on page 36, wherein he finds that Green stated that if he sur-

vived his sister, Mrs. Wilks, he would have the entire ownership of the Round Hills property and, if she survived, she would own it as residuary devisee under his will executed in 1908, for the reason that the record is barren of any evidence to sustain such finding.

70.

The Respondent, The State of New York, excepts to that part of the Special Master's Report, on page 36, wherein he finds that Green retained the whole Round Hills estate of about 270 acres up to the time of his death, for the reason that said finding is not sustained by the evidence.

The Special Master should have found that the main portion of said estate, consisting of about 130 acres upon which the Round Hills house stood, was owned by Green and his sister as tenants in common up until the time of his death.

D. 297; Rec. 6370-1; Rec. 6560-1.

71.

The Respondent, The State of New York, excepts to the following statement found on pages 53-4 of the Report of the Special Master: "He did have some unformulated notion of leaving a memorial to his mother, his sister and himself and the granite edifice at South Dartmouth on the land that had been in his family for generations, surrounded by maritime antiquities in which the Green fortune originated, with mementoes suggestive of his whaling ancestors, seem-

ed to him to be the most appropriate memorial he could leave after death and the most permanent home he could enjoy while living" for the reason that there is no substantial evidence in the Record to support it.

72.

The Respondent, The State of New York, excepts to the following statement found on page 56 of the Report of the Special Master:

"Mrs. Green looked forward to the time when she might be left alone and had selected a site and considered plans for a small cottage on the South Dartmouth estate which were never carried out"

for the reason that the Record does not contain any evidence that Mrs. Green gave consideration to what would happen in the event her husband should die, and the conclusion of the Special Master with respect thereto is wholly speculative.

73.

The Respondent, The State of New York, excepts to that part of the Special Master's Report, on page 45, wherein he finds that Green's Star Island house contained no library, no framed pictures or mementoes of his ancestors or articles of a sentimental nature or personal associations as at Round Hills, for the reason that said finding is contrary to the evidence.

Rec. 8137-8; Rec. 8142-3; Rec. 8150; Rec. 8168-9; Fla. Ex. 118, D. 360; Tex. Ex. 327, R. 4098, item E 233.

74.

The Respondent, The State of New York, excepts to that part of the Special Master's Report, on page 47, wherein he finds that Green never conducted in Florida any of the activities or experiments which occupied him in Texas and Massachusetts for the reason that such finding is not sustained by the evidence.

The Special Master should have found that although Green's Star Island residence was of an entirely different character than his place at Round Hills, being homelike in its surroundings as distinguished from the semi-public character of the Round Hills place, and the condition of his health had changed materially when he commenced his activities at Star Island from what it had been when he was in Texas and during the early summers at Round Hills, his activities and experiments and interest in scientific and recreational matters continued while he was at Star Island to be relatively as great as they had been in Texas, New York and Massachusetts.

Rec. 9029; Rec. 9020; Rec. 9042; Rec. 8267-8; Rec. 8275; D. 359; Rec. 8446-7; Fla. Ex. 176, D. 369.

75.

The Respondent, The State of New York, excepts to that part of the Special Master's Report, on page 55, wherein he finds that Green's personal counsel, Charles W. Pierson, in 1931 and again in 1933, advised him to formally adopt Florida as his legal residence, for the reason that such finding is not sustained by the evidence.

The Special Master should have found that Charles W. Pierson, Green's personal general counsel, advised him to consider changing his legal residence to Florida in the event Texas should enact an income tax law, but such a law was never passed.

N. Y. Ex. 170, D. 192-3; Mass. Ex. 304½, D. 226.

76.

The Respondent, The State of New York, excepts to the following statement found on page 17 of the Report of the Special Master:

> "The defendants all proceed upon the theory that what happened prior to the time when Green moved into his several places of abode is not material and only of historical interest and that the place where he had his principal, predominate habitation and permanent home at the time of his death was his domicile regardless of the past, * * *".

The Special Master has misapprehended the theory of the Respondent, The State of New York. New York's position is that what happened prior to the time Green acquired his summer home in Massachusetts and his winter home in Florida is of the highest importance in the determination of the issue. This will be fully developed in the brief to be submitted on behalf of The State of New York.

77.

The Respondent, The State of New York, excepts to the Conclusion of the Special Master, on page 57 of

his Report, that the domicile of Edward Howland Robinson Green at the time of his death June 8th, 1936, in fact and in law, was in the Commonwealth of Massachusetts.

The Special Master should have concluded that the domicile of Edward Howland Robinson Green at the time of his death was in the State of New York.

Respectfully submitted,

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WILLIAM M. O'REILLY,
Assistant Counsel.
December 12, 1938.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1938

No. 11 ORIGINAL

THE STATE OF TEXAS,

Complainant,

vs.

THE STATE OF FLORIDA, *et al.*,

Respondents.

BRIEF FOR COMPLAINANT

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1938

No. 11 ORIGINAL.

THE STATE OF TEXAS,

Complainant,

vs.

THE STATE OF FLORIDA, *et al.*,

Respondents.

BRIEF FOR COMPLAINANT

To the Supreme Court of the United States:

Statement of the Case.

A. **Origin and Nature of the Case:**

Complainant instituted this suit in the Supreme Court of the United States by Bill of Complaint, in an original action, against the State of Florida, Commonwealth of Massachusetts, State of New York, Mabel Harlow Green, the widow of Edward H. R. Green, and Hetty Sylvia Ann Howland Green Wilks, the sister of said Green, to determine the domicile of Green, who died June 8, 1936, at Lake Placid, Essex County, in the State of New York, where he was temporarily sojourning, leaving an estate exceeding $40,000,000, comprising real estate and tangible personal property located in the States of Texas, Florida, Massa-

chusetts and New York, and intangible property, consisting of stocks, bonds and securities the bulk of which was represented by paper evidences within the State of New York. The respondents have all filed answers. Mrs. Green has since been dismissed from the suit and is no longer a party. (300 U. S. 643 and 668.)

It will be a sufficient statement of the nature of the case to say that the Bill of Complaint, upon which the Court took jurisdiction and directed the filing of answers by all the respondents, alleged a controversy of a civil nature between two or more States of the United States of America and between a State and citizens of another State, within the original jurisdiction of this Court; that at the time of the death of said Green he was domiciled in the State of Texas and not in either of the States of Florida, Massachusetts or New York; that under the laws of each of the respective States, a transfer, succession or inheritance tax was imposed upon and assessable against the estate of the decedent wherever located; that the net estate of the decedent was insufficient to pay the Federal estate tax and the aggregate of the taxes claimed by the four States. Both individual respondents were joined as parties to the suit, upon the averment that they respectively asserted the right and privilege of succession, and upon appropriate averments as to their relation to the property and estate of decedent. The Bill of Complaint contains relevant averments as to proceedings in the state courts with relation to the administration of and right of succession to the property of the decedent, such proceedings, however, having no relation to the tax claims of the States, parties to this action.

In their several answers, submitting to the jurisdiction of this Court, the sovereign parties respondent denied that Green was domiciled in the State of Texas and each asserted

that it was the domicile of Green, and that as the domiciliary State, it had a claim against the estate and exclusive jurisdiction to collect such taxes; with the admission that the question of the domicile must be decided before the question of tax liability could be settled. None of the parties challenged the right of the United States to collect the Federal estate taxes.

The respondent, Mrs. Wilks, in her answer denied that Green's domicile was in Texas and prayed the Court to determine in which of the other States his domicile was for the purpose of the taxation of his intangible personal property, etc. Mrs. Wilks, however, is now actively supporting the claim of Massachusetts for domicile.

Upon the joining of the issues herein, the Court appointed a Special Master, to conduct hearings, take testimony and to report to the Court. In the order of reference, it was expressly provided that "the findings, conclusions and recommendations of the Master shall be subject to consideration, revision or approval by the Court." The Master has filed his Report, with his findings, conclusions and recommendations for a decree in favor of the Commonwealth of Massachusetts, and with a recommendation that the Court reserve jurisdiction for certain purposes. The cause, therefore, is now before the Court upon the Master's report and the exceptions, objections and requests for amended or substituted findings in behalf of the States of New York, Florida and Texas, respectively.

Special Master:

The Master has conducted hearings in all of the States concerned, with full opportunity to all parties to present their testimony and exhibits; and the evidence adduced at such hearings is contained in 11 volumes, comprising some

9800 pages of testimony and 1484 exhibits, filed with the Clerk. His Report is in two volumes. The first contains a statement of the pleadings and the issue raised thereby, the findings and conclusions, both as to jurisdiction and domicile; his recommendations for a decree and for reserved jurisdiction. The second volume, styled "Appendix A", purports to contain a Digest of all the Evidence and Exhibits. Before reaching his findings and conclusions, and making his report, the Master invited requested findings and supporting memoranda from counsel for all the parties; which privilege was availed of by counsel, and printed copies thereof have been filed in the cause.

C. **The Facts:**

a. JURISDICTION:

The jurisdictional facts found by the Master in his report, pages 10-15, are believed to be fully sustained by the evidence; we have no objections thereto and ask the Court to approve and adopt the same.

The Master found that the value of Green's total gross estate at the time of his death was $40,144,229.73, and that debts and administration expenses total $4,006,894.07, leaving a net estate of $36,137,335.66. The total net tax payable to the United States by said estate was found to be $17,520,987.93, and the Master further found that the tax claims of the respective States, secured by liens under the local laws, were as follows: Texas $4,685,057.73, Florida $4,663,857.40, New York $5,910,301.80, Massachusetts $4,947,008.59. The value of Green's net estate was found to be insufficient by the amount of $1,589,877.79 to satisfy the Federal estate tax and the aggregate of the taxes claimed by the four States.

b. DOMICILE:

It would be impracticable, of course, to set out in a brief ll the facts of this complicated and intricate case. As to he evidentiary facts, we have conceded that in the main hey are shown by the Master's Digest. By and large it is hought to be a fair summary of the material evidence; but his concession was not intended to imply that such digest as complete and accurate in all respects. If any latitude or editing is allowable at all, it should contain all the evi- ence and not exclude that portion which in the mind of the igester may be unimportant or irrelevant. In this connec- on, we call attention to the appendix which we submitted the Master, appended to our requested findings of fact, ages 39-78. The summary is by no means complete and d not purport to contain all the evidentiary facts, but it is ought to contain the principal and important facts, and ay prove more readable than the Master's voluminous gest.

Many of the facts found by the Master under the head- g, "Findings of Fact," pages 19-48 of the report, are ubtless true, and may be accepted by the Court as the lient facts of the case. It is to be noted, however, that no empt has been made to distinguish between ultimate and identiary facts. Few are ultimate, many are evidentiary, d still others are mixed. Those facts found by the Master ich are objectionable to complainant we have attempted indicate in our exceptions and objections; and they will pointed out in the course of the brief. Some of these and ers have been excepted and objected to by counsel for er States. A wider statement of the facts is not deemed essary.

D. **The Issue:**

The ultimate issue raised by the pleadings and the evidence is whether Edward Howland Robinson Green was at the time of his death on June 8, 1936, domiciled in the State of Texas or the State of Florida, or the Commonwealth of Massachusetts or the State of New York, for the purpose of determining which of said States has the exclusive right and jurisdiction to impose and collect the succession, transfer, or inheritance tax imposed by the domiciliary State upon the intangible personal property owned by said Green at the time of his death.

Subsidiary to this, the ultimate issue, we submit the following as practical issues, under both pleadings and evidence:

a. Was Green domiciled in Texas between and during the years 1892 and 1911?

b. If he was so domiciled, was that domicile ever abandoned and a new domicile acquired, in fact and in intention, in any of the respondent States?

c. Did Green ever have a bona fide, fixed intention to abandon his Texas domicile, if any, and a fixed intention to acquire a new domicile in any other place?

Constitution and Statutes Involved.

Constitution of the United States, Article III, Sec. 2.

Texas Inheritance Tax Statutes—

Vernon's Texas Statutes, 1936, Arts. 7117, 7120, 7133, 7144a. The Texas Statutes relied upon are set out in Appendix A, Bill of Complaint.

Applicable Legal Principles.

In our memorandum to the Master, we cited numerous rules of law, in the field of domicile, taken largely from Restatement, Conflict of Laws, A. L. I.; Beale, Conflict of

Laws; Kennan on Residence and Domicile; and from Texas Jurisprudence. We also cited a long list of supporting cases. In this brief we expect to shorten the references, and to refer only to rules deemed especially applicable and important. The adjudicated cases we expect to repeat, as sources of law obtaining in all the jurisdictions here concerned.

Every person has at all times one domicile, and no person has more than one domicile at a time. (Restatement, Sec. 11, Conflict of Laws, A. L. I., page 23.)

Domicile is the place with which a person has a settled connection for certain legal purposes, either because his home is there, or because that place is assigned to him by the law. (Restatement, Section 9, page 17.)

A domicile (of choice) is acquired by establishing a dwelling-place with the intention to make that place the home. (Restatement, Sections 15, 18; Beale, Conflict of Laws, Sections 10.3, 15.2.)

A domicile once acquired continues until the acquisition of a new domicile, and the old domicile is presumed to continue; therefore the burden of establishing the abandonment of such domicile and the acquisition of a new one is upon him alleging it. (Restatement, Sections 15, 23; Beale, Sections 23.1, 23.2.)

A domicile once acquired may continue notwithstanding that the house of the domicile has been sold or destroyed. It will continue until a new domicile has been acquired. (Restatement, Sections 12, comment b, and 23; Beale, Section 23.1.)

No mere length of residence is sufficient to create a change of domicile in the absence of

such an intention to make the new residence a home. (Beale, Sections 18.1, 22.3.)

Motives are immaterial, in changing residence or in retaining a domicile, provided the intention to change or to retain, as the case may be, is real. This is true whether the motive be to escape taxes, secure a divorce, or what not. (Beale, Section 22.1.)

Absence from the domicile for purposes of health, pleasure or business does not affect the domicile. (Beale, Sections 22.2, 22.4, 22.7; Restatement, Section 13, comment e, illustration 4.)

It cannot be too carefully noted that both fact and intention are necessary only for the purpose of acquiring a new domicile and not for the purpose of retaining a domicile already acquired. (Beale, Section 23.2.)

Home is not a mere synonym for house. To effect a change of domicile, there must be not only the acquisition of a new residence but the intent to make it a home as well. (Beale, Section 13.4.)

A home is a dwelling-place of a person, distinguished from other dwelling-places of that person by the intimacy of the relation between the person and the place. (Restatement, Section 13.)

A person cannot change his domicile by removal to a new dwelling-place without an intention to make the new dwelling-place his home. (Restatement, Section 18.)

A domicile one established continues until it is superseded by a new domicile. (Restatement, Section 23, comment.)

The rule that in every case of conflicting facts and of ambiguous domicile the presumption is strongly in favor of an original as against a newly acquired domicile is so important that we feel justified in invoking specially certain rules stated in Kennan on Residence and Domicile:

"In every case of change of domicile there are three essential elements which must concur, viz.: First, A definite abandonment of the former domicile. Second, Actual removal to, and physical presence in the new domicile. Third, A bona fide intention to change and to remain in the new domicile permanently or for an indefinite time.

"Nothing is better settled in the law of domicile than that every change must be facto et animo—in fact and intent. It is also elementary that every man must have a domicile somewhere, that the presumption is against a change of domicile and that the burden of proof rests upon the one alleging a change of domicile." Kennan, pages 194-5. (See Footnote, page 194.)

"* * * 'A change of domicile must be a change of residence sine animo revertendi. A temporary residence for the purpose of health, travel, or business does not change the domicile. Also (1) every presumption is to be made in favor of the original domicile; (2) no change can occur without an actual residence in a new place; and (3) no new domicile can be obtained without a clear intention of abandoning the old.'"

"* * * For example, if a person leaves an established domicile with no expressed intention of permanent removal, the presumption is that his absence will be temporary * * * 'The domicile of origin must prevail, unless it be proved that the party has acquired another by residence, coupled with an intention of making that his sole residence and abandoning his domicile of origin.'" Kennan, pages 64-65.

"The onus of proving the change is on the party alleging it (the presumption of law being that a

domicile, one acquired, subsists until a change is proved), and this onus is not discharged by merely proving residence in another place, which is not inconsistent with an intention to return to the original domicile, for the change must be demonstrated by fact and intention.' Kennan, page 738. (See also 15 Texas Jurisprudence, 708-715.)

ADJUDICATED CASES.

"Domicile" distinguished from "Residence":

Perkins *v.* Guaranty Trust Co., 8 N. E. (2d) 849, 274 N. Y. 250. Re-argument denied Perkins *v.* Perkins, 10 N. E. (2d) 589, 274 N. Y. 636.

Brown *v.* Boulden, 18 Tex. 432.

Pittsburg Water Heater Co. *v.* Sullivan, 115 Tex. 417, 282 S. W. 576.

Cross *v.* Everts, 28 Tex. 523.

Graves *v.* Campbell, 74 Tex. 576, 12 S. W. 238.

Minick *v.* Minick (Fla.), 149 So. 483.

Herron *v.* Passailaigue (Fla.), 110 So. 539.

Wade *v.* Wade (Fla.), 113 So. 374.

Viles *v.* City of Waltham, 157 Mass. 542, 32 N. E. 901, 34 Am. St. Rep. 311.

O'Rourke *v.* Ft. Worth Star Telegram (Tex.), 19 S. W. (2d) 136.

Presumption of continuance and burden of proof:

Perkins *v.* Guaranty Trust Co., 274 N. Y. 250; Id. 274 N. Y. 636.

In re: Rotholz' Estate, 300 N. Y. S. 56.

Atwood *v.* Atwood (Mass.), 8 N. E. (2d) 916.

Ness *v.* Commissioner (Mass.), 181 N. E. 178.

Connolly *v.* Phipps (Mass.), 186 N. E. 646.

Brown *v.* Brown (N. J. Ch.), 165 A. 643.

In Re: Wolf's Estate, 258 N. Y. S. 444, 144 Misc. 256.

In re: Wendels Estate, 259 N. Y. S. 260, 144 Misc. 467.

In re: Lachenneyer's Estate, 258 N. Y. S. 641; 144 Misc. 678.

In re: Beachwood, 254 N. Y. S. 473, 142 Misc. 400.

In re: Curtis' Will, 250 N. Y. S. 146, 140 Misc. 185.

In re: De Coppet's Estate, 252 N. Y. S. 654, 141 Misc. 406.

Katz *v.* Katz (Mass.), 174 N. E. 202.

Inhabitants of Chicopee *v.* Inhabitants of Whately, 88 Mass. (6 Allen), 508.

In re: Newcomb's Estate (N. Y.), 84 N. E. 950, 192 N. Y. 238.

Smith *v.* R. B. I. Build. Corp., 215 N. Y. S. 1, 126 Misc. 826.

Dodd *v.* Dodd (Tex.), 15 S. W. (2d) 686.

Bilbs *v.* Bilbs (Miss.), 177 So. 772.

Caheen *v.* Caheen (Ala.), 172 So. 618.

Rosa *v.* Rosa (Mass.), 5 N. E. (2d) 618.

Johnson *v.* Harvey (Ky.), 88 S. W. (2d) 42.

Wheeler *v.* Burgess (Ky.), 93 S. W. (2d) 351.

Anderson *v.* Miller (Pa.), 182 A. 742.

In re: Pusey's Estate (Pa.), 184 A. 844.

Hite's Admr. *v.* Hite's Exr. (Ky.), 97 S. W. (2d) 811, 265 Ky. 786.

Intent dominant factor:

Hite's *v.* Hite's, *supra.*

In re: Bennett's Estate (N. Y.), 238 N. Y. S. 723 Misc. Rep. 486.

Town of Washington *v.* Town of Warren (Conn.), 193 A. 751; 123 Conn. 268; See also *In re:* Newcomb's Est., 192 N. Y. 238, 84 N. E. 950.

Long-continued absence not alone sufficient to work nge of domicile:

Stallforth *v.* Helvering, 77 F. (2d) 548—Cert. denied 56 Sup. Ct. 123.

In re: Lohmann's Estate (N. Y.), 283 N. Y. S. 38; 157 Misc. 169.

Town of Plymouth *v.* Inhabitants of Town of Kingston (Mass.), 193 N. E. 576.

Wagner *v.* Scurlock (Md.), 170 A. 539.

In re: Dorrance's Estate (N. J.), 170 A. 601, 115 N. J. Eq. 268.

Tuelle *v.* Flint (Mass.), 186 N. E. 222.

McDonald *v.* Hartford Trust Co. (Conn.), 132 A. 902, 104 Conn. 169.

Mitchell *v.* U. S., 21 Wall. (U. S.) 350, 353; 22 L. Ed. 584 (Quot. *In re:* Davis, 217 F. 113, 115).

Less evidence required to retain established domicile:

Pusey's Estate (Pa.), *supra;* 184 A. 844.

Registering and voting most convincing:

In re: Curtis' Will, *supra* (N. Y.).

Houston Printing Co. *v.* Tennant (Tex.), 39 S. W. (2d) 1089; See also Kennan, page 153 and footnote; page 155, footnote, page 156, page 219.

The following are all cases in which voting was received as evidence upon the question of domicile:

People ex rel. James *v.* Surrogate's Court, 36 Hun 218 (N. Y. 1885).

Matter of Wise, 84 Misc. 663, 146 N. Y. S. 789 (1914); reversed in 165 App. Div. 420, 150 N. Y. S. 782 (1914).

Matter of Kane, 93 Misc. 406, 156 N. Y. S. 1004 (1916).

Fisk *v.* Chicago, R. I. & P. R. Co., 53 Barb. 472 (N. Y. 1868).

Marks *v.* Germania Sav. Bank, 110 La. 659, 34 So. 725 (1903).

Harvard College *v.* Gore, 5 Pick. 369 (Mass. 1827).

Schultz *v.* Barrows, 8 Okla. 297, 56 Pac. 1053 (1899).

Lee *v.* Boston, 68 Mass. (2 Gray) 484 (1854).

Greene *v.* Burkhardt, 11 Ohio Sup. & C. P. 399 (1900).

Guggenheim *v.* Long Branch, 80 N. J. L. 246 (1910); Aff'd 83 N. J. L. 628, 84 Atl. 21 (1912).
Dalrymple's Est., 215 Pa. 367, 64 Atl. 554 (1906).
Cooper's Admr. *v.* Commonwealth, 121 Va. 338, 93 S. E. 680 (1917).
Fidelity Tr. & Safety Vault Co. *v.* Preston, 96 Ky. 277; 28 S. W. 658 (1894).
Tuttle *v.* Wood, 115 Iowa 507, 88 N. W. 1056 (1902).

The following are cases in which the payment of taxes was received as evidence of domicile:

People ex rel. James *v.* Surrogate's Court, *supra.*
Beattie's Est., 129 Misc. Rep. 241, 221 N. Y. S. 726 (1927); aff'd 222 App. Div. 729, 225 N. Y. S. 792 (1928).
Fisk *v.* Chicago, R. I. & P. R. Co., *supra.*
Matter of Kane, *supra.*
Schultz *v.* Barrows, *supra.*
Lee *v.* Boston, *supra.*
Babcock *v.* Slater, 212 Mass. 434, 99 N. E. 173 (1912).
Bowen *v.* Commonwealth, 126 Va. 182, 101 S. E. 232 (1919).
Greene *v.* Burkhardt, *supra.*
Guggenheim *v.* City of Long Branch, *supra.*
Chase *v.* Chase, 66 N. H. 588, 29 Atl. 553 (1891).
Helle *v.* Deerfield Twp., 96 Ill. App. 642 (1901).
Tuttle *v.* Wood, *supra.*
Cooper's Admr. *v.* Commonwealth, *supra.*
Dalrymple's Est., *supra.*

Physical presence and continuous living at old domicile t necessary:

In re: Brown's Will, 133 Misc. 457, 233 N. Y. S. 145.
Cooper's Admr. *v.* Commonwealth, 121 Va. 338, 93 S. E. 680.
See also People ex rel. James *v.* Surrogate's Court of Putnam County, 36 Hun 218 (N. Y.), cited in Kennan, . page 625.

From the above list of cases, we suggest a careful reading of two, especially. *Matter of Newcomb*, 192 N. Y. 250, contains a clear statement of the law of New York, upon almost every relevant principle of domicile. *McConnell* v. *Kelley*, 138 Mass. 372, cited with approval in the *Newcomb* case, is upon the question of the immateriality of motives in the selection or retention of a domicile, when honest and when made in good faith.

Summary of Points Involved.

These have already been indicated in our statement of the issue. They will now be stated in the form of propositions:

I.

E. H. R. Green was domiciled in Texas between and during the years 1892 and 1911.

II.

Green never had a bona fide, fixed intention to abandon his Texas domicile; nor did he have a fixed intention to acquire a new domicile in any other place.

III.

Green's Texas domicile was never abandoned, in fact and intention.

IV.

Green never acquired, in fact and intention, a domicile in either of the States of New York or Florida or in the Commonwealth of Massachusetts.

V.

Green, at the time of his death, was domiciled in the State of Texas.

Argument.

These five propositions are so closely related that they properly may be considered and argued together. As the phases of domicile in Green's life variantly presented by the conflicting claims of the States require separation into periods, we shall consider them accordingly.

The case is *sui generis*. No other like it will be found in the books. Its novelties and its intricacies will attract and intrigue the Court. It is the story of a strong, vibrant, busy man who, at the zenith of his powers, was called by a mother's entreaties from his home in Texas, the State he loved so well, to manage her business; and who, after her death, spent years in another State concerned with her affairs and later with the management of the vast fortune to which he and his sister succeeded. Then came the grave illness which made him virtually an invalid the rest of his days. In a ceaseless quest for health, he was ever in flight; as he himself expressed it: "Following the sun." These considerations and others which will be pointed out prevented and will account for his failure to return to the State of his domicile to live.

It will require the greatest nicety of discrimination to find the key to the riddle of Green's final domicile. It will require, likewise, a detachment not to be expected from the interested parties, with such a vast stake. Happily this tribunal affords that disinterested approach and detachment. The Court is never impressed with size, but concerns itself with principles only. The calm, dispassionate judgment of the Court may be trusted to find the solution of all the intricacies of the case and to render the right judgment, no matter what State prevails.

We realize the deference which courts have always shown, and properly shown, the report and recommenda-

tions of a master. In this case, we are faced with an adverse report of the Special Master. The burden to refute is upon us, and we accept the responsibility. Happily, there is nothing sacrosanct about the report of a master. It must stand or fall on its merits. His findings and conclusions are subject to the supervision and approval of the Court. In this case, the Court in the order of reference has expressly provided that "the findings, conclusions and recommendations of the Master shall be subject to consideration, revision or approval by the Court." We appreciate the prodigious labors of the Master. His industry and fidelity are not open to question. But we have been impelled to lodge numerous objections to his findings, his conclusions and his recommendations. Our critique has been prepared in no spirit of cavil; and we hope no carping criticism will creep into our brief. Our approach has been and will be one of respect, no matter how vigorously expressed.

We have concluded to repeat the argument made to the Master, in our supporting memorandum to requested findings, with some elaboration, of course, in view of the report and the exceptions. It failed to convince the Master, but the Court may possibly be more favorably impressed. That argument, *mutatis mutandis*, was as follows:

Under the issues of the case, the ultimate question is: Where was Edward H. R. Green domiciled at death? The decision of that question will determine the right of the successful State to the taxation on the transfer of the intangible personal property of the estate.

The discussion of domicile, insofar as Texas is concerned, will fall under two periods: That from 1893 to 1911, and from the latter year to the date of death of Colonel Green, in 1936. For the purposes of the other States, the

life of the Colonel and conditions may lend themselves more advantageously to further separation by periods. We shall treat all periods from 1911 as one. We see no point in our trying to reconcile the conflicting claims of our adversaries; nor in tracing progressive acquisitions and abandonments, as will be claimed by some of them. If Green ever acquired a domicile in any one of the other States and retained it to his death, there is no question of reverter or reacquisition.

There is much in the record of no real materiality or significance upon the ultimate issues. Many "tall tales" have crept into the record, and there are many incidents and episodes which shed no light upon the question of domicile or claimed abandonment. They may serve to amuse or to reveal the unique personality of the Colonel, his eccentricities, vagaries, caprices and idiosyncrasies. They also serve to show his great capacity for enjoyment. The Court, we apprehend, will not be much concerned with them. There is one thing, however, we wish to emphasize. Many of these incidents are revealing on the sentimental side of the Colonel and the deep sense of affection of which he was capable. We do not speak now of the abiding love for a woman, but for a State, her people and her institutions. As the argument proceeds, we shall show the value of sentimental considerations which may, indeed, furnish the real clue to the determination of this difficult case. The background of affection and attachment for Texas drawn from an experience of more than 15 years of actual living within the State, innumerable activities and contacts, resulted in a permanency of attachment, which has the greatest significance and importance in connection with his subsequent actions and habit of living. These considerations will be of special importance on his supposed abandonment of the State as his domicile, and his supposed acquisition of a new domicile.

These remarks are made at the outset of the discussion of the facts, because eminent authority has approved the principle that a man's home (or domicile) "is where his heart is." We hope to show that the Colonel's heart was in Texas, his first domicile of choice, and that that attachment persisted throughout all the years of his life. He brought his heart to Texas and he left it there, despite the long absence, occasioned by considerations of business and health. It is certain that the Colonel's heart was deeply rooted in Texas soil. One of the questions the Court must decide is whether it was ever torn from that soil, by any voluntary act or intention.

We think it appropriate to dispose of a contention sought to be raised by the introduction of a statute of Texas which has become a part of the record. We do not know that counsel for any of the adversary States will contend that such statute is controlling, or that it will have any important bearing on the case. We must, however, impute some purpose to the tender of this statute. It is the part of prudence, therefore, to briefly consider the particular statute and to give our views thereon.

The statute to which we have referred is Article 2958 of the Revised Civil Statutes of Texas, of 1925. So much of the statute as has any possible relevance here reads as follows:

> "The residence of a single man is where he usually sleeps at night; that of a married man is where his wife resides. * * *"

This statute, prior to the Revision and as originally enacted, was Section 4 of Chapter 11, Acts of the 29th Legislature (1905), page 521. The title of the Act was as follows:

"An act to regulate elections and to provide penalties for its violations, and to repeal the acts of the 28th Legislature of 1903, regulating elections, general, special and primary, and political conventions, approved April 1, 1903."

The Act was and is a comprehensive statute for the regulation of elections in Texas. The caption, body of the Act and emergency clause, all reveal, unmistakably, that this was the primary and sole purpose of the enactment. It has no relation to the question of domicile for any other purpose than to define voting residence.

We may add, appropriately, we think, that while Colonel Green habitually exercised the privilege of voting in Texas, Article 2958 had application to him and restricted his right to his residence as defined, namely, to the place where he usually slept at night. When he took up his actual abode in other States, and no longer had a place of residence in Texas, it is manifest that the standard of this statute not only had no further application to him, but it is obvious that it was incapable of application. Since he had no "place where he usually slept at night" (in Texas) the test could no longer be applied. The old residence continued to control, just as when he lived in the State.

While there are some judicial utterances to the contrary, we feel on safe ground in saying that the place a man regards as his home, how he regards that place, is of the utmost importance in determining domicile; not in the face of the facts, perhaps, when conclusively shown to be inconsistent, but certainly of great weight on the vital question of intent. How otherwise are we to ascertain that intimacy of relation, sentiment, and association so necessary to the making of a home? How determine where "his heart" is? How locate, unerringly, his "hearthstone"? And who so

well qualified to speak as the one most vitally concerned? That is why declarations and formal recognitions are admitted, especially when in the nature of *res gestae*. Such evidences are of the greatest value here, where we see such apparent ambiguity arising out of many residences and acts and attitudes. The acts and declarations relied upon must, of course, be honestly done, honestly made. No fraudulent or fictitious thing will be of any value whatsoever. It will be our task to point out that none of the declarations, acts or attitudes of Colonel Green, with relation to Texas, was assumed or was tainted with fraud. It is to be remembered, however, that motives are immaterial. If Colonel Green preferred Texas because of her tax laws, or for any other legitimate reason, it did not affect his absolute right of choice. We shall have occasion to suggest many good reasons why the Colonel made and held on to (not merely "desired") Texas as his home.

1893-1911.

We shall first discuss briefly the period from 1893 to 1911. In presenting the picture of Colonel Green's life and activities in Texas during the period under discussion, we shall show the outstanding and more significant facts only. Detail is unnecessary; it would be an imposition at this point in the inquiry.

When Colonel Green came to Texas in 1892 to take charge of his mother's railroad, he plunged immediately into that business. Under competent tutelage, he rapidly learned the railroad business and began the active management and direction of the road. He worked untiringly and under his close and intelligent direction, the road soon reached a high degree of equipment and efficiency, ranking with the finest railroads in the State. He was, in fact, the

railroad, it often being referred to as a "one man" railroad. He continued as its President and Director until after its sale in 1928, and actually until 1932. It was undoubtedly the Colonel's chief business activity, it was his "joy and his pride." It is worthy of note that the Texas Midland extension from Commerce to Greenville was not completed until 1921. The Colonel planned to take over the Trinity and Brazos Valley, in which he owned considerable stock, and make it a part of the Midland, but his illness prevented.

Among other business activities were the Demonstration or Experimental Farm near Terrell; the Green Floral Company at Dallas, a concern doing a large wholesale and retail flower business; substantial stock holdings in business concerns, such as the Murray Company (manufacturers of gin machinery), and many others too numerous to mention. He had close business connections and affiliations with the Terrell and Dallas banks. He was greatly interested in scientific subjects, mechanical and other innovations, and inventions of all sorts.

He enjoyed the social side of life and joined many clubs, fraternities and organizations. He was genial, affable, unconventional, and mixed with all sorts and conditions of men. He made thousands of friends, in all walks of life, and had many intimates in the business and professional world.

One of Colonel Green's activities, in which he took great delight, was politics. He was a political leader and was regarded as, perhaps, the outstanding Republican of the State. He gave both time and money to the cause and held high office in the Party.

He regarded Terrell as his home throughout and paid his poll taxes there; although exempt, under the Texas

statute, because of the loss of one leg. He voted regularly at Terrell and continued to do so for at least a decade after he left Texas. It is a fair inference that he continued to vote there, even after that, through absentee ballot, and after he obtained a permanent certificate exempting him from further payment of poll taxes. The official records, pursuant to the election laws, have long since been destroyed.

In innumerable deeds, papers, and documents he described himself invariably as of Terrell, Texas. He consistently and persistently claimed Terrell as his legal residence and home.

Colonel Green had several places of residence in Texas. At Terrell they included his bachelor apartments and his private car. This car was always parked on the railroad for his use, and it was specially constructed and equipped for living and for his requirements. Probably he spent more time there than at any other place. When he took up residence at Dallas he went to Terrell almost daily, and worked and lived on the car. There was also a house on the Experimental Farm near Terrell, built and equipped for living purposes; but he seldom occupied it and at irregular intervals only.

After about 1896, Colonel Green had, from time to time, several residences or places of abode in Dallas. He had hotel apartments at the Windsor and Oriental, and, later, commodious and comfortable residences in the city. He made his federal income tax returns to the Collector at Dallas, and continued that practice to the very end. For the purposes of this case, however, it is not important to decide whether the Colonel's home was in Dallas or Terrell. It is sufficient if it was in either, but it is worth remembering that the Colonel always regarded and claimed Terrell as his home and legal residence.

The interests and activities of Colonel Green in Texas were so numerous and so varied that it is practically impossible to enumerate them. It is sufficient to say that long before 1911, he had so identified himself with the State that he was recognized as one of her outstanding and most useful citizens. There can be no manner of doubt that Colonel Green by his long residence and his manner and habit of life for nearly two decades, had firmly fixed and established his home and legal residence, therefore his domicile, in Texas. The depth, the sincerity, and the permanence of the ties which bound him to Texas are not open to question. Argument is inadmissible. With such a background of attachment and sentiment, it must be concluded inevitably that the Colonel left Texas reluctantly and for the most compelling reasons only. Counsel will be hard put, we think, to give any sound reasons whatever for claiming that Colonel Green was not domiciled in Texas from 1893 to 1911.

1911-1936.

Green continued with the construction of the railroad through 1921; and remained as President and Director until July 1932. He retained close control and supervision, and exercised full control until its sale to the Southern Pacific in 1928. He kept in close touch, requiring weekly reports; the only change in such reports after 1911 being that they were transmitted by letter rather than personally or across the table as formerly. He attended the annual meetings of the Texas Midland railroad, with one exception, every year until it was sold in 1928.

Green's continuing interest in Texas is further shown by the following acts: He continued to make his returns of federal income taxes to the Collector at Dallas. During the war, he subscribed for $5,000,000 in Liberty Bonds through

the American National Bank of Terrell, his old bank. In 1920, he offered the First National Bank of Terrell, in which he owned no stock and in which he had no financial interest, $250,000 to be placed to its credit in the Federal Reserve Bank at Dallas. The purpose of this proffer was to prevent an anticipated run on the bank; and he came to Terrell and offered more if needed. In May, 1921, a similar incident occurred at Dallas, involving the Security National Bank. His action in both instances saved the banks.

Green voted regularly at Terrell until 1920, at least, and paid poll taxes every year until he became exempt, for age, in 1928, when he was entitled, under Texas laws, to a permanent exemption certificate. The election records are no longer extant, but it is by no means certain that he did not continue to vote, by absentee ballot, as long as his health allowed. He was proud of his Texas citizenship and loved to vote.

Green kept in touch with his old friends in Texas. He never lost his affection for any of them. With all the eminent doctors at his command and in frequent attendance upon him, it was Dr. Buie, of Marlin, who was recognized and regarded as his chief medical adviser.

Of compelling force, we think, is the evidence of the Colonel's persistent refusal to change his residence from Terrell to Florida. He resisted the importunities of his friend Walter Allen, and his arguments in favor of Florida as a domicile. He was fully aware of the financial advantages which would accrue to him by a change in domicile to Florida. He was well advised by his personal attorney, Mr. Pierson, as to the steps necessary to effect a change of residence; Pierson stressing the element of intention, inasmuch, we suppose, as he was well aware that the Colonel had a house at Round Hills and hotel apartments in New York City, in addition to the Star Island place. But all efforts

to induce a change failed. If he wavered, Green's momentary indecision ended when the threat of income taxes in Texas passed. The probative value of this evidence, on the issue of intent to retain the old domicile, especially, cannot be fairly denied.

Green's instructions, to the very day of his death, were to show Terrell as his residence, in all documents and papers. His declarations to the same effect, both oral and written, are almost without number, as shown by the testimony and exhibits in the record. The deepest sentiment and attachment for his beloved Texas was often manifested; and it is to be observed that, in this case, sentimental considerations are of the greatest significance and value. When, in 1936, the inroads upon his health brought him to the sad state of approaching dissolution, he wanted to go back to Texas, notwithstanding the disappointing experience of the year before at Marlin. But even Dr. Buie advised against it. His advice prevailed; so the end came at Lake Placid instead of in Texas.

The Colonel's exercise in Texas of the rights and duties of citizenship, such as voting, the payment of taxes as a resident, and the holding of office in his party, have been mentioned. Another tie to Texas is found in the circumstance of his appointment by Governor Colquitt to the Governor's personal staff, this being the origin of the title "Colonel." He accepted and attended the inaugural at Austin in January, 1911, in full uniform. Two years later was re-appointed to the Staff; and he was always proud this honor and his commission as a citizen of Texas, ached to the Governor.

A noteworthy fact in the record relates to the establishnt of the "Terrell Trust" in 1923. Green settled at rrell, Texas, a trust for the benefit of several young

ladies, his protegees, in whose education and support he had shown an interest for years. The instrument was dated April 9th, 1923, and provided the sum of $100,000.00, Walter P. Allen, of Terrell, and Mrs. Wilks being named as trustees. The Trust was to terminate at the end of ten years after Green's decease. In the case of vacancies in the office of trustees, it was provided that same should be filled by Henry C. Coke and Edwin M. Reardon of Dallas, Texas, two of the Colonel's dearest and most trusted friends. No bond was required of the trustees, and wide discretion in the administration of the trust was vested in them. A specially significant circumstance is that in Paragraph 1, the Colonel suggested the type of investment he preferred, naming the "Murray Company of Texas" as an example. In 1933, the Trust was amended. The amendment specially noted the deaths of both Coke and Reardon; and provided that vacancies should be filled by some unnamed persons from "_____ County, Texas." The significance of this evidence, we think, can hardly be overstated.

Through all the years of Green's absence, the evidences of an unbroken affection, loyalty and love for Texas, her institutions and old friends in that State, form one of the most remarkable phases of this remarkable case. In form of manifestation, they differ somewhat, of course, but in sincerity and consistency they are "without variableness or shadow of turning." They furnish convincing, if not conclusive, proof that Green regarded Texas as his home (not merely "domicile") to the end of his days.

We feel justified in emphasizing two very important proofs and phases of intention, occurring within the last two years of the Colonel's life:

In the record there appears a striking episode, having to do with the Colonel's interest in and assistance to the

Texas Centennial of 1936. In 1934, he had been appointed as a member of the Memorial Museum Committee, but ill health prevented active participation. He subscribed for large numbers of the Centennial stamps, for outgoing mail and for his collection. This stamp issue was, in fact, suggested by the Colonel, as a means of advertising the Centennial. Finally came the award of a certificate of Distinguished Service to Texas and the Centennial.

When Colonel Green received the certificate, he found that his residence was shown as Massachusetts. He promptly returned it by letter dated January 15, 1935, from Miami Beach, saying: "This is not correct, as I have never changed my legal residence from Terrell, Texas, and if it is not too much trouble, I would thank you to make the change. I am returning the certificate." The certificate was corrected accordingly and returned January 23, 1935, with the Committee's expression of delight that Texas could continue to claim the Colonel as a citizen. (R. 1014-1049.)

Here is evidence of the most formal and unequivocal character that Colonel Green as late as 1935, regarded, declared, and insisted that Terrell, Texas, was his home and legal residence (in the Colonel's mind and heart, as in law, they were the same). Written from "Star Island," and in direct relation to the very subject of residence and citizenship, the declaration was *res gestae* and is of compelling force.

Not only was the very issue of domicile here raised, but it is extremely significant that it was the Colonel who raised . He promptly and decisively challenged the mistaken sumption of the Centennial officials, and requested the ange from Massachusetts to Texas. The episode takes great legal significance and weight, for that it involved, . cessarily, a repudiation of the claims of every one of the

respondent States. Massachusetts was expressly repudiated. The rejection of New York and Florida was no less certain, although impliedly done. The positive designation of Texas as the legal residence excluded those States as certainly as if they had been expressly named.

The record will be searched in vain for any evidence inconsistent and irreconcilable with this express declaration or for any clear and convincing evidence showing any change of intention or attitude, or militating against the clear conclusion that the Colonel's mind and heart were unalterably fixed upon Texas as home; that it was his hearthstone. One more tie of affection and loyalty to Texas, and one more manifestation of it; and in the very shadow of death! Need more be said?

Of striking significance, also, in this record are the facts revealed by the testimony of Dr. Charles Frederick Roche of Miami Beach (R. 7318-7330). The consultation, at which he first met the Colonel, took place at Star Island, Miami Beach, in February, 1934. At the time, Colonel Green was an invalid, suffering from heart trouble and pernicious anæmia. During the two years following, the Doctor visited him in a professional capacity almost daily. In some of those visits the Colonel discussed the subjects of his residence more than once. He discussed Texas and his friends there, his long life in that State and the fact that his business interests largely were there. He concluded by stating to the Doctor that his residence was in Terrell, Texas.

After testifying that the Colonel's stay at Star Island was generally during the winter season, from November to April, sometimes May, he traced his patient's movement from Florida—to Massachusetts in the summer of '34, to Marlin in '35 and to New York State in '36. Dr. Buie, regarded by the Colonel as his chief medical adviser, was

always consulted in regard to the movements of the Colonel. Dr. Buie's advice and wishes largely guided the other doctors at Miami Beach. In his last move, 1936, the Colonel expressed the preference for Marlin, but he stated in substance that his experience there the year before led him to doubt the wisdom of it. He had expressed the same preference in 1935 and in fact did go to Texas that year.

Doubtless the Respondents will make common cause for the claim of abandonment of the Texas domicile. It is necessary that that domicile be gotten out of the way before any of respondent States would have even a semblance of claim for domicile. Then they will fall out among themselves. Severally they will contend for domicile at death; each with as much show of reason as any of the others, but leading to irreconcilable conflicts and confusion. We shall see New York claiming domicile from 1911 to the date of the Colonel's death; Massachusetts from about 1921; and Florida from about 1925. In this highly interesting situation, we can appreciate the difficulties which confronted the Master and now confront the Court.

When the Court comes to make the final findings and conclusions, and faces the anomalous and ambiguous situation presented by Colonel Green's use and occupation of so many houses, hotel apartments, and vessels, after leaving Texas in 1911, it will feel tempted, as we have been (corrupting Shakespeare somewhat), to exclaim:

"A plague on all your houses—and boats."

or it is certain that while all these abodes—the 90th St. use, the suite at the Waldorf-Astoria, the Sherry-Nether- nd apartments, the main houses at Round Hills and Star and, the yacht "United States," the numerous houseboats l other vessels—were potentially capable of being made o "homes" and dedicated to such uses, no one of them

was ever actually so. They were, so to speak, just landing places in the Colonel's flight of 25 years to "Journey's End." For truly he was in flight after leaving Texas. He never seemed to be "able to light," as one witness expressed it. That the end came at Lake Placid, rather than in the beloved Texas, was merely fortuitous—the decision of the doctors rather than that of Colonel Green.

In this state of indecision and uncertainty the Court will perceive the necessity of the nicest discrimination, if the riddle is to be solved upon any other hypothesis than the continuance and retention of the Texas domicile. It will be impressed, we are sure, with the wisdom of the old maxim:

> "It is not so much to know the facts as to know the significance of the facts."

It may be reasonably anticipated, we think, that great stress will be laid upon the size and the immense outlays made upon both the Round Hills estate and the house and grounds at Star Island. It may not be denied that millions were spent at Round Hills and vast sums at Star Island. But we must not be awed by the vastness and the lavish wealth expended upon either place. It was but the case of a very rich man spending his millions in a ceaseless quest for health. Peace and rest were impossible. There was left to him only one course: to "follow the sun," as he once graphically expressed it. His abodes in Massachusetts and Florida were intended for seasonal occupation only; sojourning places, so to speak. Neither was any more a home, in the true sense, than was any of his several New York places of residence. The relative size and amount of expenditures could have no legal significance except in a contest between the respondent States, and upon the assumption that the Texas domicile had been abandoned and a new domicile acquired elsewhere.

If reincarnation were possible and the Colonel might reappear in the flesh and take the witness stand, we fancy his saying:

"My home, my domicile? Why, it is and always has been in Texas. For nearly twenty years, beginning in my early manhood, I resided and did business there and lived my life there. I made Texas my first home of choice and I have never had any other. I have had many houses, many boats, but only one home. My heart was in Texas, and I never took it away. I died at Lake Placid and was buried at Bellows Falls, but my heart was buried in Texas. They have a saying down there: 'once a Texan, always a Texan.' I lived and I died true to that tradition."

This imaginary, but not apocryphal, statement is not entirely fanciful in the light of the whole record. We believe the Court will be impressed with its substance.

In connection with such argument we refer the Court to the Appendix to our Requested Findings of Fact, addressed to the Master, for a rather concise but complete summary of Green's life and activities, pages 39-78.

We have renewed the argument made before the Master primarily because it presents a fair outline of the Texas view; and is based upon facts found by the Master or contained in the "Digest." There is the further purpose of showing, by the facts recited and emphasized therein, the lack of substance in the contention pressed upon the Master by counsel for other States, to the effect that Green's early history furnishes nothing more than a mere historical background. While the Master seemingly has not predicated his final conclusion upon that basis, he appears to have seriously entertained it and has stated that it leads to the same conclusion. The argument is thought to refute completely that narrow view. In consideration of the adverse report of the

Master, and the exceptions and objections we have lodged, the need for some elaboration, at least, is apparent.

It might simplify matters for the Court if, at this juncture, we attempt to make the Texas position plain, and to make certain concessions. Complainant's whole case may be said to be as follows: That Green firmly fixed and established a domicile of choice in Texas, between and during the years 1892 to 1911; that he never abandoned that home in intention, at least; that such domicile is presumed in law to have continued, until abandoned and a new domicile acquired elsewhere, in both fact and intention; that the burden of proof is upon Respondents, respectively, to overcome that presumption by clear and satisfactory proof; that in addition to the presumption of law there is an impressive array of facts, amounting to a preponderance, in the record, supporting the presumption; that Green never established his true home in any other State; that Green's domicile in Texas persisted and continued to the time of his death, and that Green died domiciled in Texas. Complainant relies, in the face of the fact of residence and physical presence in other states, upon the principle that both fact and intention must concur for the acquisition of a new domicile; but that, on the other hand, intention alone is sufficient to retain and preserve a domicile already acquired.

In the light of the record, we may not deny that, after 1911, Green had no fixed place of residence in Texas, save, perhaps, his private car at Terrell which was not available for his use and was never used by him after 1928. It must be conceded, too, that after 1911 Green had dwelling places or residences in all three of the respondent States; which he occupied for long periods of time, at least a part of each year. We have at all times conceded that all those residences, even the grandiose, gargantuan mansion at Round

Hills, Massachusetts, with all its distractions, were potentially homes; but we have denied that any one of them was actually a home, in the true and legal sense. The concession applies to the hotel apartments of Green in New York, of course; for a man, if he chooses, may make his home in a hotel or a tent or a boiler factory. While conceding residence and physical presence in the other States, our insistence is that each and all of the residences and dwelling places in the other States failed to become homes, for lack of the vital element of intention.

There is no question of re-acquisition. Complainant simply relies upon the continuance and retention of the Texas home and domicile of Green, by his continuous, unbroken intention, conclusively manifested over a period of twenty-five years, after he took up his abode in New York.

In discussing and applying our exceptions, we shall not consider them seriatim, but in such order as we think will best illustrate our contentions and by subjects rather than by specific reference to numbers. In some instances, however, they will be grouped, where closely related. Some will not be discussed at all. There is no intention, however, to waive any of them, whether discussed or not.

We have complained of the failure of the Master to make an express finding that Green had fixed and established his domicile in Texas during the period of the years 1892 to 1911. Perhaps we should not argue the point because an implied finding to this effect has been made, and it may have been the intention of the Master to make the finding we requested. In his statements, pages 51, 52 of the Report, containing the conclusions of abandonment of the Texas domicile, it is implicit that Green had fixed a domicile of choice in Texas, during that period, and perhaps until 1921. There could be no abandonment of a domicile

unless one had been previously acquired. At all events, the facts found by the Master, in this relation, conclusively show that Green was domiciled in Texas from 1892 until 1911. Furthermore, we apprehend that counsel for none of the respondent States or Mrs. Wilks will seriously contend that Texas was not the domicile of Green during the period under discussion. It may be too much to expect an express admission, but the evidence is overwhelming and we do not feel justified in laboring the point further. We, therefore, now address our argument to the later periods.

If Green actually abandoned his domicile of choice in Texas in 1911, when he moved his place of residence to New York, disposed of his Texas residence and moved his furniture and household effects to the West Ninetieth Street place and began living there with Miss Harlow, as found by the Master, the new domicile so acquired must have been in New York; otherwise there would be a hiatus in domicile, between the years 1911 and 1921. This, of course, is obviously impossible. A man must have a domicile at all times, and but one at a time. The undisputed evidence is that Green had no abode save in New York, from 1911 to 1921. Frankly, we have been surprised at the manner in which the Master has disposed of the claims of New York for domicile. We had expected that if he should find abandonment of the Texas domicile, it would be upon the theory of the acquisition of a new domicile in the State of New York; continuing until, at least, the completion and occupancy of the house at Round Hills, Massachusetts. We quite agree, however, with the conclusions of the Master that Green never acquired a domicile in New York, because of insufficient evidence to show that he ever intended to make either of his dwelling places in that State his permanent home. He properly applied the criterion of lack

of intention, in the case of New York; but he failed to apply that test, upon similar and undistinguishable indicia and criteria, in the case of Massachusetts and Florida. The Master, by his process of reasoning, has neatly disposed of New York and has virtually "skipped" that State; notwithstanding his long years of residence there and his physical presence within the State during the years 1911 to 1921, and after years. The device is easier than to conclude a New York domicile, later abandoned in favor of Massachusetts; but it is a surprising quirk. We are not complaining, it is to be remembered, that the Master did not find in favor of New York. But, for our purposes, we think we are entitled to an unequivocal finding that the preponderance of the evidence (and the legal presumption as well) show a continuance of the Texas domicile until 1921, at least. We expect to show that it continued to the date of Green's death.

In trying to account for the Master's singular treatment of the claims of New York, we have thought that perhaps he proceeded upon the theory that, on the whole case, Massachusetts was the domicile of Green; that Florida was the only other State that could claim domicile at death because of his residence there; that he could dispose of Texas through abandonment, and New York through the impermanence of Green's intention to make his home in that State; and then could eliminate Florida, upon the principle, sometimes applied, that the Star Island house and estate was a secondary and subordinate home. If that was the Master's formula, it is untenable, because, in effect, he has made the choice of domicile, rather than the decedent. But this is conjecture, and we must leave it to the Court to find the explanation.

The Master has found an actual abandonment of the Texas domicile, but he seems to have been uncertain when the abandonment actually occurred. In fairness, we must say that he has indicated that it occurred in 1921, when he acquired a new home in Massachusetts; but he does not say so. Our exceptions challenge his conclusions on this point. The facts upon which the Master chiefly made his deduction are the following: That after 1911, Green had no residence or actual abode in the State of Texas; that he sold his Texas residence and disposed of his main business interests there; that he moved his furniture, household effects and automobile to New York and installed them in the West Ninetieth Street house, and immediately set up his establishment there; that after 1921 his visits to Texas diminished and finally ceased; that when freed from all restraints, he failed to again acquire a residence in Texas; that Green acquired a new home in Massachusetts; that Green's many declarations that his home and legal residence was in Texas were self serving and made with the intention to deceive, and for the purpose of escaping taxation in each of the respondent States; that all such declarations must be disregarded, because of something fictitious or sinister about them all. These are the main considerations upon which he based his conclusions of abandonment; the others are of slight importance. Some of these facts are undisputed. We wish to consider here those only which relate to Green's lack of a residence in Texas, his declarations, and the significance and effect of the abode in Massachusetts. We respectfully insist that the deductions of abandonment and acquisition of a new domicile are without support in the evidence.

As to the matter of the lack of a place of residence or a fixed abode in Texas, after 1911, it is not conclusive, although it may have some legal significance. We have cited author-

ity for the proposition that a house or place of residence may be burned or sold, and domicile may still continue. If the requisite intent to retain the old home exists, it is immaterial that there is no actual dwelling place.

For Green to have built or acquired a new residence in Texas would have had no greater legal significance, in the circumstances of this case, than were the abodes in Massachusetts and Florida. It would have been just another seasonal dwelling place; seldom occupied because of the desperate condition of his health and the constant need for change of scene. Consideration of health and enforced travel fully account for the failure of Green to acquire anew a Texas residence, after 1921; as business considerations account for such failure from 1911 to 1921.

As to the Master's conclusion that Green's declarations were fictional and dishonest, we emphatically insist that there is no basis, in all the evidence of the record, for the conclusion. True, Green probably had distinct advantages, as he thought, in retaining his domicile in Texas; and especially the avoidance of taxes more burdensome in other States. The motive may be conceded to be selfish, but it was not the only one, and it is a form of selfishness not uncommon. Many good citizens are afflicted with it. The phenomenon is to be found in high places and in low. His motives in this respect, as in the matter of voting and exercising the rights of citizenship, are without legal significance and are wholly immaterial, provided they were honest. It is the law of every jurisdiction here concerned that motives are immaterial, if genuine and bona fide; and we have cited above ample authority for the proposition. From Massachusetts, we have cited and emphasized the case of *McConnell* v. *Kelley*, 138 Mass. 372, in which the sole or controlling motive for a change of domicile was to secure the advantages of more favorable insolvent debtor's laws.

We would have scant respect for any authority holding that mere selfishness of motive deprives a person of the right to choose his own domicile. We doubt that any such case, properly analyzed, can be found. The selection of many, perhaps most, domiciles is motivated by selfish reasons, in one form or another. Moralists may condemn them, but judges are not concerned with the selfishness of motives in the choice of a domicile. They are immaterial, in the legal sense. The right of selection is absolute in every person *sui juris;* and motives may not be examined judicially except for honesty and reality.

As to Green's long absence from Texas, it is, of course, not to be denied that physical presence and continuous living at an old home is not required, if the intent to retain it is shown or as long as it is presumed. Nor does absence from an established domicile, no matter how prolonged, alone work a change of domicile. A temporary residence elsewhere for the purpose of health, travel or business does not change the domicile. The fair conclusion, upon the whole record, is that Green's absence from the State of Texas in his later years, while concededly long, was temporary and fully accounted for by the considerations just mentioned. We would not be justified in arguing the point further.

In this same relation, the Master seems to have conceived the notion that the whole mass of declaratory evidence in favor of Texas may be disregarded and nullified, upon the theory that Green's declarations were fraudulent and deceptive. (R. 52.) How he got the theory we do not know. Certainly not from the evidence, for it does not support his deductions. It is a bald conclusion, without basis. There is no evidence justifying this wholesale imputation of fraud and dishonesty. Green's frequent and repeated

declarations that he was a citizen of Texas and that his legal residence was there bear the stamp of honest, sincere belief; and many of them an evident spontaneity and lack of ulterior motive. There is not a scintilla of evidence in the record that impeaches his sincerity. Take the instance of his letter to the Texas Centennial officials, so soon before his death, to which we have adverted. Can anyone doubt the honesty of that letter, and Green's belief that he was still a citizen of Texas and that his legal residence was in that State? Suppose he was mistaken, and that all his efforts to preserve his Texas domicile were futile? Is that any impeachment of his good faith and honesty?

The Master has stressed Green's statements to the taxing officials of New York, Massachusetts and Florida, as examples of misrepresentation and deceit. Neither the evidence nor the Master's findings on the facts and circumstances of those transactions support the deduction of fraud. Green made no representation of fact concerning a residence or place of abode in Texas. He made no such claim. He simply claimed that he was not a resident or citizen of either of those States, taxable as such, but that his legal residence was in Texas and that he was a citizen of that State. It is not to be argued that the officials were ignorant of the fact that Green had places of residence in their States; but that was not enough to tax him as a resident. If Green was legally a resident of Texas, he was not taxable as a resident of the other States. It was a question of jurisdiction solely. That was all that was at issue. Green convinced them all; but he never represented to any of them that he then had a residence or dwelling place in Texas, expressly or by implication. Furthermore, it is to be presumed that those officials discharged their duty to fully investigate, and all means were open. Their conclusion that Green was not taxable as a resident of their jurisdictions,

based upon no misrepresentation of fact, is a vindication rather than an impeachment of his position. It seems almost fantastic to impute fraud in such circumstances. It is a singular perversion of the obvious significance of the facts. We should not speak so plainly, if the point were not so important and the deductions so mischievous in their consequences. They have palpably colored and influenced the whole of the Master's findings on abandonment. We must be forthright.

Another point, comprehended in our exceptions, is the complaint over the Master's findings concerning Green's tastes and conceptions of home and domicile. (R. 53.) Properly speaking, the objectionable paragraph is a mixture of findings, arguments and conclusions. We reply, in the first place, that Green's abstract notions and legal concepts have nothing whatever to do with the case. The evidence reflects that his purpose to retain the old domicile and to refuse the acquisition of a new one, to be inferred from both conduct and declarations, was a very practical, concrete thing. He very well knew the meaning of "home," "legal residence," and "domicile," both lay and legal. To him they were equivalents. His able and astute counsel, Mr. Pierson, had seen to that. The question of domicile and change of domicile arose with Pierson more than once. The correspondence shows that Green was fully advised on all the elements of domicile and change; and that Pierson always stressed the vital part that intention plays in both. It is a little ironical that the discussions always related to a possible change of residence from Texas to Florida, and not to Massachusetts. Green was not without a measure of intelligence; and it is rather far-fetched to say that he refused the advice he had sought and formed his own notions of domicile and change of domicile, variant from those of

is trusted counsellor. Be that as it may, the conclusions re mere speculations and are not to be inferred from any acts of record.

As a base for further conclusions, the Master has conceived that "He (Green) was nomadic in his tastes and evidently regarded domicile as something distinct and apart from home or residence." More speculation? Where, in the acts, is there any proof that Green was a nomad? After all, if he was migratory, it was not from any "nomadic tastes"; but his frequent movements were those of a tortured, stricken man, seeking health and peace. What a strange place to find it at Round Hills, with its raucous and maddening mazes and bewilderments! But there is where the Master has assigned him a domicile; and at a place only "seasonally occupied," at that. Plainly Green's abnormal movements, if any, arose not from taste or inclination but from unarguable necessity.

There is even less evidence for the Master's assumption that Green was confused as to the meaning of *home* and *domicile;* that he thought they were entirely different things. Aside from Pierson's careful advice on the subject, it is reasonable to conclude that Green's life experience, and his common sense as well, told him that there was no difference in the meaning of the terms. "Legal residence," the expression he used most, was to him the place where he had made his first and only home, and it was always regarded by him as his domicile. If, as the Court has said, to him (Green) *domicile* was a mental state where he could obtain certain political advantages and freedom from taxation," Green was not far wrong at that. We have seen that motives, if real, are wholly immaterial. As to mental state, what is intention but a mental state? Where, as here, domicile is sought to be retained by intention alone, what

is involved but a state of mind, a condition or an attitude? The whole thing seems to be without point. Without further discussion, we submit that there is no evidence of the peculiar notions the Master has imputed to Green, and besides they are without legal significance. The inferences are all without substance.

Before we leave this point, let us briefly consider a circumstance to which the Master seems to have attached great importance, viz.: the statement by Green to his attorney, in 1931, "that he had no sentiment where his legal residence might be." The Master has taken the incident too literally. The statement on its face appears contrary to the mass of evidence showing that Green did have the deepest sentiment and affection for Texas, his legal residence. But when the circumstances under which it was made are considered, it loses all significance. It was made when Green was advised that an income tax in Texas was imminent. That to Green was a real menace. We may concede that it was even a strain upon his allegiance. We concede that he probably meant this and nothing more: When it comes to taxes sentiment must take second place and perhaps, give way. Even Texas could go too far! But when the threat passed, we hear no more of a change of domicile. If he wavered on that one occasion, Green was never moved finally to abandon his beloved Texas. The fact did not justify the Master in treating it as an impeachement of Green's sincerity, and in giving it the weight he has done.

The Master (R. 28) has conceded that "if mental state alone, as evidenced by declarations, could establish domicile, Green remained a Texan up to the time of his death." He might well have added that Green's whole course of conduct, aside from physical presence and residence in other states, confirmed his declarations and the intention to be inferred

therefrom. He has found many facts supporting that conclusion.

The Master has given undue weight and prominence to the mere fact of residence and physical presence. This is a case of claimed change of an established domicile, and, while the factors named are admittedly proper subjects of consideration and are important, intention and mental states and attitudes are equally important. Some authorities, indeed, approve the principle that intent is the dominating factor. The Master (perhaps not intending), applied the principle in denying the claims of New York, with its impressive showing of both residence and presence. He should have applied it, likewise, to Massachusetts and Florida; and to a like effect.

This (as to Texas) being a case in which retention of domicile is claimed through intention, the inquiry largely centers in the state of mind and mental attitudes of Green. This is true not only as to his old home in Texas, but equally so as to every one of his abodes in the other States. It must be so, because intention is as necessary to abandonment and acquisition as to retention. If Green's mental attitude toward every one of his abodes and residences in states other than Texas is given its proper significance and weight, will be found to be an insuperable obstacle to the conclusion of abandonment in favor of any other State. That's why we say it is like no other case we have seen. The element of intention is vital, supreme and dominating here; and it should be the determining factor in the case.

The middle of the road approach of the Master, between conflicting theories, has its merit, of course. But it has led to surprising results. It has led to the selection (not determination) of the least appropriate of all Green's abodes. Never happy anywhere the last fifteen years of his

life, Green was most unhappy at Round Hills. While our position, if Texas should lose, is one of "benevolent neutrality," we must say that the hotel apartment at the Sherry-Netherland or the Star Island estate came nearer to being "homes" than austere, bewildering, maddening Round Hills. But we must not lose our balance and go further into comparisons, which are always odious.

We do not exactly follow the individual and independent methods of analysis pursued by the Master, as he indicated he has done. In an effort to be entirely candid, we must confess that the question which has given counsel for Texas their chief concern is the difficulty of pointing to any affirmative evidence that Green, in the later years of his life, retained the intention of returning to Texas to live. There can be little doubt that when he left the State, he expected his absence to be temporary and that he intended to return, no matter how long in the future that might be nor how indefinite the need for his remaining in New York. The same may be said for the next ten years. But what after 1921? When, if ever, did he change his intention? If we are to trust his declarations and his insistences, he never changed it. After 1921, it cannot be fairly claimed that business considerations prevented his return to Texas to live. His business was well in hand, although centered in New York. Its active conduct was in competent hands. What, then, is the answer to the problem?

First, we say that we are dealing with the case of an established domicile; and the law presumes a continuance of the intention to retain and to return. The fact of residence and physical presence in other states is not enough to overcome the legal presumption. There must be a concurrence of both fact and intention to make a new home, in order to acquire a new domicile. The intention must be

fixed and permanent in character. If there is not sufficient evidence to show the intention of making a place a permanent home, as the Master held with respect to New York, no change of domicile is effected. The same holding, we think, should have been made as to the residences both in Florida and Massachusetts. Each of the opposing States has made a formidable showing on the fact of residence, but none has discharged the burden of proving the requisite intention. The facts found by the Master do not warrant the conclusion of abandonment and the acquisition of domicile in Massachusetts; nor would they warrant a conclusion of domicile in either New York or Florida. The lack of intention is fatal to the claims of all.

Complainant, however, does not rely alone upon legal presumption and burdens of proof. The evidence, viewed as a whole, corroborates and supports the presumption. Fairly appraised, it shows that Green's intention to retain Texas as his home persisted to the very end. It is the only view consistent with Green's declarations, which may not be justly discarded because deceptive. By and large, the very facts found by the Master demonstrate the continuous intent of retention, and refute the theory of abandonment. If there should be any revisions by the Court, we have no doubt they will only tend to support our contention.

While business did not keep Green away from Texas during the last fifteen years of his life, we think we may safely say that the state of his health did. His movements and activities during those years are to be accounted for only on the basis of a desperate search for health. Except for treatments at Marlin, Texas apparently was not the place for one in his condition. But he went to Marlin in 1935 and, as we have seen, wished to go there again in 1936. In the circumstances, it was useless to build or take resi-

dence in Texas. Far better that he make Round Hills his summer stopping or sojourning place and Star Island his winter haven, with the New York apartment in between, in the eternal round for health. This, in fact, is what he did, and it was no more the making of either residence a home than was his use, for shorter periods in Spring and Fall, of his New York hotel apartments. That is about all that can be said on the point, without unwarranted reiteration.

The paramount question in the case, from the Texas viewpoint, is, of course, in what place was it the real intention of Green to make his permanent home? This question we have presented, in various forms, by our exceptions to the Master's report. As to the findings and conclusions with relation to the New York and Florida residences we have made few if any, objections. We are content with the facts found and the conclusion that Green did not intend to make either of them his home in the legal sense. The process by which New York was eliminated, through impermanence of intention; and Florida, through the seasonal, subordinate character of the residence there, a mere Winter sojourning place, need not be defended. The important facts have been fully found and they permit of but one conclusion: that Green did not regard either of those places as his home. His heart was not in either of them, nor did he make either his "hearthstone".

Our task is to refute the findings and conclusion of the Master as to the Round Hills residence. We hold no brief for New York or Florida. Those States are ably represented. Their contentions have been and will continue to be presented with skill and ability. But we are still wondering what difference in fixity of purpose, or permanence of intention, or sentimental attachment, led to their re-

jection and to the acceptance of the Round Hills mansion and estate as the permanent and superior home.

The New York abodes, while not as pretentious or expensive as the Massachusetts and Florida residences, were adequate and suited to the purposes and uses of a home. Domestic establishments, suited to Green's needs, were set up in each. He actually lived in them for long periods of time, and retained the Sherry-Netherland apartment to the day of his death. There were plenty of *lares et penates*, of which the Master makes so much, to be found in all the New York residences. What, then, prevented their becoming homes? The answer is: the lack of intention, so vital in the making of a home. The hotel apartment, retained by Green at the time of his death, had become merely a place for seasonal occupation and convenience as distinguished from a residence intended as a home. We shall see that the same situation existed as to both the Florida and Massachusetts abodes.

Star Island was acquired as a seasonal residence, as Green turned, upon the direction of his medical advisors, to the ideal climate of Miami Beach. At great expense, he built his house and made an exotic estate there. The photographs appended to the report reveal something of its charm and its enchantment. Even the Master has not been able to conceal his admiration and, perhaps, a secret yearning for such a home, mosquitoes or no mosquitoes. It seemed ideal for a rich man's home. But, nevertheless, it was just another seasonal residence for Green.

So he had three such places for the seasons: Round Hills for Summer, Star Island for Winter, Sherry-Netherland in between—and he made the round, year by year. With all its beauty and its comforts, the Star Island house and grounds was never a home, in the true sense, despite the Master's finding and classification of it as a subsidiary

one. The real basis of that finding, we submit, is that Green lived in it each year for about ten years, for nearly the same length of time as at Round Hills; but Star Island simply could not be ignored as was New York. A choice had to be made, and the Master selected Round Hills. The facts found by the Master alone refute the process; to say nothing of the other facts contained in his Digest. Star Island, along with the New York hotel apartment, failed for lack of intention.

Coming to the findings for Massachusetts, we shall only refer briefly to certain features and characteristics of the Round Hills estate, found by the Master and shown by the facts of record, which militate against and overcome his conclusions. In the first place, let us remember that there could be no home there, unless Green had abandoned his Texas home and it was superseded by a new home. Remember, too, that the whole inquiry involves a search for the secret of Green's heart—what place, in truth, he regarded as his permanent home.

We shall not take time with relative size and outlays at Round Hills and Star Island. Conceivably, in a contest between Florida and Massachusetts, those factors might have a value; might, indeed, become controlling. We fear the Master has been impressed, perhaps awed, by them to the point of selecting Massachusetts in the first place. Be that as it may, such considerations have no place in a contest between Texas and Massachusetts.

Now let us take a look at Round Hills, as reflected alone by the facts found. At the time of Green's death there were sixty-odd structures on the 270-acre place, ranging from hot dog stands to an aviation field. The many public and semi-public features and projects are sufficiently set out in the Report to determine their significance and their incongruity, in relation to a home for one in Green's state of health.

Detailed recital is unnecessary, but we may mention the refreshment places, the aviation field, the public bathing beaches, radio station, boats and buses for school children, and the old whaler "Charles W. Morgan." All in all we doubt whether such an aggregation of incongruous, curious things were ever before gathered in one place.

Did not Green himself give a reasonable explanation for the creation of this character of place, *viz.*, that it was conceived as a memorial to his mother, Mrs. Hetty Green, with the hope that, using it as a public playground or resort, some of the ill-will and disapproval toward Mrs. Hetty Green existing among the inhabitants of New Bedford and vicinity might be overcome? And was not Green's own attitude and feeling toward this bizarre establishment aptly expressed and reflected when, in his own words, he described it as a mere experimental or scientific proving ground for some of his endeavors?

We are not to be understood as claiming that the strange and raucous bewilderments of Round Hills were legally incompatible with its dedication as a home. But we do say that they were not the usual appurtenances to a home, and not conducive to that peace and rest of which Green was so desperately in need. Perhaps that accounts for the fact that Green spent less than half of each year at the place; even when advised that it made no difference, in the matter of taxing him as a resident, whether he spent more or less than six months annually in Massachusetts. Inferences from established facts and common sense compel the conclusion that Green found it impossible to make such a place as Round Hills his regular establishment, his true and permanent home, even upon the assumption of a desire and intention to abandon Texas.

The Master has found the monumental character, the memorial purpose, the institutional appearance of the Round

Hills mansion. All the findings of its massiveness and solidity, the comforts and the luxury of the interior, the retinue of servants and employes, the boats, everything, cannot obscure those fundamental purposes, at war with the notion of a permanent home. Even the *"lares et penates"* are not important. Green had them everywhere he lived—in Texas, in New York, in Florida, in Massachusetts. They differed only in form and degree. The Master stresses the portraits and the books; but the picture of his mother, Green had always with him. As for the library of rare and costly books, it is doubtful whether that had any real value for Green, except as a collection. Certainly he had no flair for literature and extensive reading, even upon the special subjects largely predominant. Books were books to him and he had them at every place he lived. It is of little importance that the Round Hills collection was larger and more valuable. His tastes were not of a literary or artistic nature and the Master has so found. And so with the other things found in the Master's process of giving them a special value and intimacy of relation to Round Hills as a home. Space will not permit a fuller discussion. But the above considerations will suffice to suggest why we say that Massachusetts has no better claim for domicile than New York or Florida, if as much.

The truth of the matter, as reflected by the record and by the very findings of the Master, is that none of the respondent States has a convincing claim for domicile. They have not proved abandonment of the Texas domicile, in fact and intention; they have not proved the acquisition of a new home, in the legal sense. Nothing less will suffice. They have discharged the onerous burden that is upon them, only to the extent of showing, at most, a state of ambiguity. The law requires more than that. In such a condition, the established domicile remains—in Texas.

At the risk of repetition, we recapitulate certain important considerations in behalf of Texas: Green's absence from Texas is explained by his business interests and his health. Neither respondents nor the Master have advanced a sound reason for dismissing as insincere and dishonest an unvaried and unbroken course of conduct extending over a period of a quarter of a century and evidenced by actions as well as hundreds of oral and written declarations, showing conclusively that Green's heart was in Texas. There is no sound reason for concluding that Green was dishonest in claiming Texas as his home, and that he was merely trying to escape taxes. There was far more than that. The deepest sentiments of his heart were at bottom in the claim, and they explain the consistency of his attitude. But motives of that character, even if true, are unimportant. If he traveled much, the law accords as much, and it is to be expected of a very rich man. The fact that he maintained no house in Texas is without importance. We speak of importance in the legal sense. The important point is that Green regarded Texas, in a real sense and within the meaning of the authorities, as the place of his home.

We have requested the Court to adopt the findings which the Master refused, when presented to him in our memorandum. Our Bill of Exceptions sets them out again, pp. 35-44. Conceiving that they are clearly supported on the record, and the legal conclusions to be sound, we renew the request. Each, in effect, has been argued herein.

A brief paragraph to cover a certain point within our exceptions may be here inserted, in order to dispel a possible misconception. The Master has somehow conceived the notion that the Texas case has been made to depend upon the local law of that State. We had endeavored, in our memorandum, to make it plain that there was no Texas statute of general application defining or determining domi-

cile or relating to the domiciliary issues of this case. The legal principles and rules of domicile recognized by the courts of Texas are a part of the general or common law of the United States; and are, in all essentials, the same as those prevailing in the other jurisdictions here concerned. We rely upon no "local" law, but upon the law common to all the States. Applicability of the various principles invoked by the respective parties is about the only difference between us, as far as the law is concerned.

We conclude this brief, already extended beyond our intention, by borrowing an example from contemporary American history. We have spoken of this as a strange case, and surely it is. But no more strange than the case of a great and world known citizen of the United States and of Texas: the late Colonel E. M. House, of Austin. Despite a prolonged absence and residence away from his home and domicile of choice, for more than two decades, there is hardly a schoolboy or girl who does not know where the "home" of House was. The recent offer for probate of the will of Colonel House at Austin, Texas, suggested his example.

For nearly a quarter of a century, House was almost continuously away from Austin with his family. He resided variously at hotels in Washington, New York and Paris; and was about as well known in the Capital and in New York as in Austin. After the war he lived in his beautiful residence in Massachusetts; and, as we remember, died there. He had long since sold his noted home at Austin, and was not physically present in the State of Texas for long years before his death. Yet he always voted in Texas, publicly declared he was a citizen of Texas and his intention of retaining his home in Texas. The world and all concerned recognize that State as his home, therefore his

domicile, at death. It was the intention, as here, that preserved the old domicile, in the face of contrary factual appearances.

It may be stretching a bit, perhaps, the rule of judicial knowledge, to ask the Court to take cognizance of these widely known facts. We hope not, because they present such a striking instance of the tenacity with which men often hold on to the old, and refuse to exchange for the new, in matters of domicile. If the analogy must fail, because outside of the record, although the facts are commonly known, we shall be deprived of a very illuminating example.

Our final word: Intention dominates this case. The facts and the law are with Texas.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1938

No. 11 Original

THE STATE OF TEXAS, *Complainant*,

-vs-

THE STATE OF FLORIDA, et als., *Respondents*.

BRIEF FOR THE DEFENDANT, THE STATE OF FLORIDA, IN SUPPORT OF ITS EXCEPTIONS TO THE REPORT OF THE SPECIAL MASTER.

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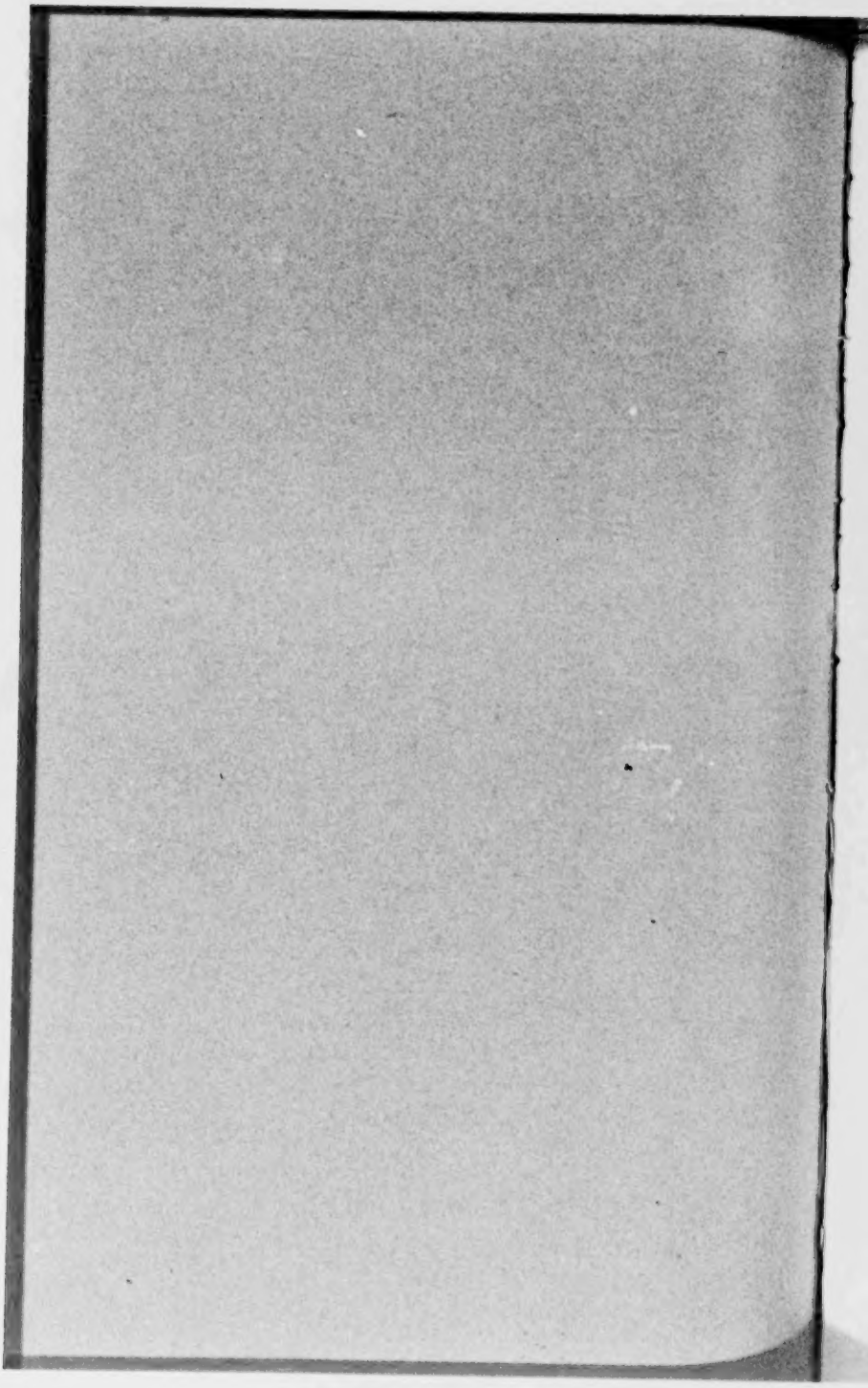

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BRIEF FOR THE DEFENDANT, THE STATE OF FLORIDA, IN SUPPORT OF ITS EXCEPTIONS TO THE REPORT OF THE SPECIAL MASTER.

STATEMENT.

On March 12, A. D. 1937, the complainant, the State of Texas, presented to this Court its motion for leave to file its bill of complaint against the State of Florida, the Commonwealth of Massachusetts, the State of New York, Mabel Harlow Green, and Hetty Sylvia Ann Howland Green Wilks, and tendered therewith its proposed bill of complaint. The right to invoke the original jur-

isdiction of this Court in this cause was claimed under the provision of Article III, Section 2, Clause 2, of the Constitution of the United States.

On March 15, 1937, this Court entered its order in this cause, granting the said motion and allowing the filing of the said bill of complaint, whereupon process issued to the several defendants, commanding them to appear before this Court on Monday, May 17, 1937, to answer unto the bill of complaint exhibited against them by the complainant. Thereafter, in due course the defendants filed their several answers herein.

THE PLEADINGS

The bill alleges:

(a) That the complainant and defendant States are States of the United States of America, and the defendants, Mabel Harlow Green and Hetty Sylvia Ann Howland Green Wilks, are citizens of the United States of America, and of the State of New York, and inhabitants of the Southern District of New York.

(b) That this is a case or controversy of a civil nature between two or more States of the United States and between a State and citizens of another State, and therefore within the original jurisdiction of this Court.

(c) That the complainant and each of the defendant States and the United States of America prior to June, 1936, had passed and there were in effect therein laws imposing a transfer, succession, estate, or inheritance tax upon the right of succession or inheritance, giving reference to the said laws and the rate of the tax so imposed.

(d) That Edward Howland Robinson Green died on June 8, 1936, in Essex County, New York, where he was then temporarily sojourning; that the said Edward Howland Robinson Green at the time of his death was possessed of property of very great value, estimated at approximately $44,348,500.00, all of which was located outside of the State of Texas except a small amount of unimproved real estate of the estimated value of $6,000.00.

(e) That the domicil of the decedent, Edward Howland Robinson Green, at the time of his death on June 8, 1936, was in the City of Terrell in the County of Kaufman and the State of Texas, and that each of the defendant States likewise claimed his domicil at the time of his death, and that each said State claims the right to collect from the estate of said Edward Howland Robinson Green the transfer, succession, estate or inheritance tax imposed by its laws as the domiciliary State of said decedent Green.

(f) It is alleged that if each of the defendant States should collect the tax claimed in addition to the Federal tax, the remaining assets of said estate would be insufficient to satisfy the complainant's claim for transfer, succession, estate or inheritance taxes.

Much of the matter alleged in the bill of complaint is admitted by the several answers herein, but each defendant State denies that Edward Howland Robinson Green at the time of his death was domiciled in the State of Texas, and denies that he was domiciled in either of the other defendant States, and by way of counter-claim each defendant State alleges that the decedent Edward Howland Robinson Green was at the time

of his death and had been continuously for a long time prior thereto, domiciled within the particular State making said counter-claim.

The State of Florida in its answer by way of counter-claim alleges that the decedent Edward Howland Robinson Green was at the time of his death, and had been continuously for a long time prior thereto, domiciled within the State of Florida in the City of Miami Beach in Dade County, and that under authority of Chapter 16015, Laws of Florida, Acts of 1933, it is entitled to levy and collect an estate or inheritance tax upon the transfer by inheritance, descent, devise, succession or bequest of the estate of said Edward Howland Robinson Green, computed upon the net value of all the real property and tangible personal property of said estate situated in the State of Florida, and upon all the intangible personal property of said estate wherever situate, fixed at eighty per cent of the estate taxes imposed by the United States of America under the Revenue Act of 1926.

THE ISSUES

The pleadings present two main questions:

First, jurisdiction;

Second, the domicil of Edward Howland Robinson Green at the time of his death.

APPOINTMENT AND REPORT OF SPECIAL MASTER.

On June 1, 1937, an order was entered herein, appointing the Honorable John S. Flannery of Washington, D. C., Special Master in this cause, with authority

to summon witnesses, issue subpoenas, and take such testimony as might be introduced and such as he might deem is necessary to call for, and he was directed to make findings of fact and conclusions of law and submit the same to this Court, together with his recommendations for a decree. It was therein ordered that the findings, conclusions and recommendations of the Master shall be subject to consideration, revision or approval by the Court. Pursuant to said Order the said Master proceeded to take the testimony introduced before him in said cause, and did make and submit to the Court his findings of fact and conclusions of law, together with his recommendation for a decree, in which he found that the domicil of Edward Howland Robinson Green at the time of his death June 8, 1938, in fact and in law was in the Commonwealth of Massachusetts. This Report was received by the Court on November 7, 1938, and it was thereupon ordered that exceptions to the same, if any, be filed on or before December 12, 1938. The defendant, the State of Florida, filed with the Clerk its exceptions to the Master's Report on December 9, 1938.

ARGUMENT

Point One

JURISDICTION

The Master found that this cause presents an actual justiciable controversy of a civil nature between the complainant, the State of Texas, and the defendants, the State of Florida, the State of New York, and the Commonwealth of Massachusetts, of which this Court has exclusive original jurisdiction. It seems to us that no

argument is required to demonstrate that this finding is fully sustained in fact and in law.

Point Two

FACTS WHICH SUSTAIN FLORIDA'S EXCEPTIONS TO THE MASTER'S REPORT AND ESTABLISH GREEN'S DOMICIL IN FLORIDA JUNE 8, 1936.

Florida's exceptions to the Master's Report will for convenience be repeated here and argued in their numerical order.

EXCEPTION I.

> "This defendant excepts to the finding stated in the first full paragraph on page 20 of the Master's Report as follows:
>
> 'He joined clubs, societies and social organizations in every community where he dwelt, but never attended them.'
>
> because the said statement and finding standing alone does not inform the Court of the decline of Green's interest in clubs, societies, and social organizations in Massachusetts and his continued interest in such clubs, societies, and social organizations in Florida until his death."

It is true as found by the Master that Green joined clubs, societies and social organizations in every community where he lived, but if Green at the time he died

had two homes as the Master found on page 57 of his Report, one at Round Hills in Massachusetts, and one on Star Island, Miami Beach, Florida, and if his domicil is to be determined by which was his principal home, and if his principal home is to be determined by his habits of life and his interest in the one over the other, and if his interest is to be judged to any extent by his activities, civic, social and domestic, then it is important that the Court be informed of the rise and fall of his interest in clubs, societies and social organizations in the communities of said homes where such is the fact established by the record.

When Green went to Texas and sought to establish himself there, he joined various clubs and organizations. He founded a fishing club (D. 4, R. 61), organized a dramatic club (D. 11, R. 263), a baseball league (D. 26, R. 619), helped organize and became a member of an automobile club (D. 50, R. 1067), and otherwise became interested in and affiliated with the community life there.

Later when he moved to New York he joined various clubs there, including the Columbia Yacht Club in 1911 (N. Y. Ex. 50, D. 133, R. 3271), the Atlantic Yacht Club in 1912 (N. Y. Ex. 52, D. 134, R. 3276), the New York Chamber of Commerce (N. Y. Ex. 44, D. 133, R. 3250). He became a member of the Union Club prior to 1914 (D. 133, R. 3258-9). He became a member of the New York Athletic Club in 1912 (N. Y. Ex. 47, D. 133, R. 3262). He became a member of the Metropolitan Museum of Art in 1914 and was elected to life membership in 1918 (N. Y. Ex. 51, D. 133, R. 3275). He became a member in 1917 of the American Museum of Natural History (N. Y. Ex. 37, D. 128, R. 3210), the Aero Club of America in 1917 (N. Y. Exs. 78, 79, D. 137, R. 3357-9),

the Collectors Club in 1918 (N. Y. Ex. 27, D. 126, R. 3173). He became a member of the New York Microscopical Society in 1921 (N. Y. Ex. 12, D. 118, R. 3031-2, 3035). He was a member of the Association for Stamp Exhibitors, Inc., of New York City in 1925 (N. Y. Ex. 61, D. 134, R. 3298-3300). He was a member of the American Philatelic Society with its headquarters in New York City (D. 128, R. 3215). He joined the International Chamber of Commerce in 1925 (N. Y. Exs. 44, 45, D. 132-3, R. 3250-2). There is no evidence in the Record that he joined any clubs in New York after 1925, except the Lake Placid Club of Lake Placid, New York (N. Y. Exs. 57-59, D. 134, R. 3290, 3294).

After he built the Round Hills house and began to spend a substantial part of his time there, he joined a number of organizations, including the Sons of the American Revolution in 1924 (Mass. Exs. 367-368, D. 292-299-302, R. 6222 to 6229), the Society of Colonial Wars in 1925 (Mass. Ex. 369, D. 292-300-302, R. 6229). He became a life member of the Massachusetts Horticultural Society in 1925 (Mass. Ex. 370, D. 292, R. 6236), and a life member of the New Bedford Port Society for the Moral Improvement of Seamen (Mass. Ex. 229, D. 281, R. 6095). He was a member of the New Bedford Yacht Club as late as 1931 (Mass. Ex. 230, D. 281, R. 6096). He early became a member of the Wamsutta Club and the New Bedford Country Club (D. 329, R. 7032), but resigned from both these organizations in 1932 (Fla. Exs. 23 and 24, D. 257, R. 5647). There is no evidence in the record to show that he joined any Massachusetts organizations after 1928.

Green's interest in the community life in Florida began during the development of his home on Star Island,

and thence continued in marked contrast to the decline of his community interest in Massachusetts. He joined clubs and organizations representing practically every phase of community life in and about Miami Beach and Miami, Florida. He became a member of the Miami Beach Chamber of Commerce in 1926, and contributed $1000 thereto each year thereafter until his death, and in addition made special contributions to advertise Miami Beach and vicinity. (D. 363, R. 8549). He became a member of the Waterways Highway Association of Florida in 1927 (Fla. Exs. 266-267, D. 383; R. 9104, 9107). He became a member of the Committee of One Hundred, a Miami Beach organization for political and civic purposes (D. 361, R. 8484). He became a member of the Coco-Lobo-Cay Club in 1927 (Fla. Ex. 234, D. 381, R. 8995), and showed his interest by purchasing ten shares of the stock of said club of the par value of $100 per share (Fla. Ex. 235, D. 381, R. 8998), and again in 1931 by putting up $4000.00 for founder membership in said club (Fla. Exs. 236-239, D. 381, R. 9001 to 9006). He was elected to membership in the Miami Anglers Club in 1928, and that year contributed $1000 to the organization to be used toward the purchase of the mortgage on the club property (Fla. Exs. 229-230a, D. 380, R. 8986 to 8988). He became a sustaining member of the Dade County Council, Boy Scouts of America, State of Florida, in 1929, and his interest therein continued (Fla. Ex. 233, D. 381, R. 8993).

He became a member of several social clubs, including the Bath Club (Fla. Exs. 153-157, D. 364, R. 8580-9), and displayed his interest in said club by reserving a cabana for several seasons and insisting that it be near the driveway and of easy access to his car (Fla. Exs.

154, 155 and 156, D. 364, R. 8582, et seq.). He actually attended this club as shown by a photograph that came from the Round Hills House at South Dartmouth, Massachusetts (Fla. Ex. 151, D. 363, R. 8577). He became a member of the Surf Club and put $3000 in same in 1930, and in 1935 certificate for ten shares of stock in the Surf Hotel Corporation was issued to him in connection therewith (Fla. Exs. 262-265, D. 383, R. 9092-9102). He became a member of the Little Theatre of Miami Beach (Fla. Ex. 256, D. 383, R. 9708), and in 1933 became a member of the Artists and Writers Club, and in 1934 a life member of that organization (Fla. Exs. 231 and 232, D. 380, R. 8990-8991). In 1933 he became a life member in the Greater Miami Beach Athletic Club (Fla. Ex. 254, D. 383, R. 9075). He was a member in good standing of the Florida Outboard Motor Association in 1932 (Fla. Ex. 250, D. 383, R. 9068). He became a member of the Miami Beach Rod and Reel Club in 1932, and in 1935 subscribed to a fund to help liquidate the mortgage on same, and acquired a certificate of ownership of 1/400 of the Club's assets (Fla. Exs. 257, 258 and 259, D. 383, R. 9079 et seq.). He became a member of the Dade County Tax Relief Association in 1932 and paid for 100 memberships therein (Fla. Ex. 240, D. 383, R. 9048). He became a subscriber to the Hialeah Club for the 1935 season (Fla. Ex. 255, R. 9077). He was an honorary life member of the Southeastern Florida Yacht Club of Palm Beach (Fla. Ex. 261, D. 383, R. 9088), and a member of the Biscayne Bay Yacht Club (R. 9110). He became a member of the Florida Peace Officers Association in 1933 (Fla. Ex. 251, D. 383, R. 9069), and an honorary member in 1934 (Fla. Ex. 253a, D. 383, R. 9074), and supported the work of that

organization in behalf of the underprivileged youth of Florida (Fla. Exs. 251-253, D. 383, R. 9074).

Thus it is seen that while Green's interest declined and his membership voluntarily ceased in clubs, societies and social organizations, particularly in Massachusetts, his membership in like clubs, societies and social organizations in Florida continued. His resignation from the Wamsutta Club and the New Bedford Country Club in 1932 was said to wind up his membership in such clubs in Massachusetts, and the record discloses that after that year he became a member of at least eight additional organizations within the State of Florida. In Kennan on Residence and Domicile, Section 108, page 220, it is stated:

> "The fact that one becomes associated with churches, clubs, fraternal organizations, etc., greatly strengthens the presumption that he intends to acquire a domicile in the new location, and is one of the criteria often referred to in a discussion of the subject."

We therefore deem it important to call to the Court's attention those facts established by the record, and not disclosed by the Master's Report, that while Green's interest in clubs, societies and organizations declined in other places, particularly in Massachusetts, the evidence not only fails to disclose a diminution in such community interest in Florida, but on the contrary affirmatively shows that such interest in Florida continued to the very last.

EXCEPTION II.

"This defendant excepts to the finding of the Master, stated on page 20 of the report, that in Massachusetts and Florida, Green took an active interest in yachting and boating, owned a number of boats, and gave trophies for water sports, because the said statement and finding does not inform the Court of the decline of Green's interest in yachting and boating and the giving of trophies for water sports in Massachusetts, and his continued interest in yachting and boating and giving of tropies for water sports in Florida."

In 1918 Green purchased a number of boats in Massachusetts (D. 320, R. 6787-9), but beginning about 1921 or 1922 he gradually sold off all of his Massachusetts boats except the Lydia (D. 320, R. 6806-7; Fla. Ex. 3, D. 50, R. 3490, D. 156, R. 3557-60). There is no evidence that he ever personally used the boat Lydia after he acquired the boat Daydream in 1919 (D. 320, R. 6787; Fla. Ex. 3, D. 150, R. 3490).

He owned several boats in Florida, and apparently got a great deal of enjoyment from boating and yachting in Florida waters (D. 248, R. 5479-80 and 5486; D. 209, R. 4996; D. 364, R. 8600-4).

On his first trip to Florida in 1923 he bought a house boat called the Pioneer at a cost of $107,000 (Fla. Ex. 3, D. 150, R. 3490). That year he ordered another boat built in Jacksonville, Florida, and took delivery of same in 1924 (D. 248, R. 5486, D. 212, R. 5052). This boat cost approximately $160,000 and was called the Colonel.

(Fla. Ex. 2, D. 150, R. 3487). Green and his family lived on the boat Colonel while in Florida, until his Star Island home was completed and occupied in 1927. He subsequently had the boat Colonel converted to represent a Mississippi showboat, and kept her anchored at the dock at his Star Island home where it became the scene of some colorful parties (D. 364, R. 8606, D. 351 and 352, R. 8245; Fla. Ex. 95, D. 344, R. 8032). This boat was kept by Green until 1934 (Fla. Ex. 3, D. 150, R. 3490). The Mabel G. was another boat built for Green at a cost of about $42,500 and kept in Florida waters. It was a speed cruiser and was considered Mrs. Green's yacht. It was always kept ready for use while the Greens were in Florida (D. 364-5, D. 354, R. 8355, et seq.; Fla. Ex. 3, D. 150, R. 3490). The Isola Stella (Italian for Star Island) was of the gondola type, and was built for Green in Miami in 1928 at a cost of $29,000. It was constructed so as to pass under low bridges in cruising up and down the Indian River in the Inland waterways of Miami Beach and vicinity. This boat was retained by Green until he died (D. 364-5, R. 8603 et seq.). It carried the legend, "Isola Stella, Miami Beach," on her stern (D. 364-5, R. 8604; Fla. Ex. 19, D. 250, R. 5518), and was registered at Tampa with her home port Miami (Fla. Ex. 112, D. 354, R. 8369, 8360). This boat was also owned and kept by Green until the time of his death. The boat Friday built in Miami at a cost of $23,000 was also registered with her home port, Miami, Florida, and retained by Green until his death (D. 360, R. 8451, D. 364, R. 8605). Green entered the Isola Stella in a marine pageant in 1928 (D. 352, R. 8256), and he and Mrs. Green were personally aboard her at that time. (D. 352, R. 8258). Green supported the International Regatta given by the Palm Beach Yacht Club in 1934, (Fla. Ex. 260,

D. 383, R. 9086). Green was a member of the Biscayne Bay Yacht Club (R. 9110), and the Southeastern Yacht Club (Fla. Ex. 261, D. 383, R. 9088), the Waterways Highway Association (Fla. Exs. 266 and 267, D. 383, R. 9104 et seq.) and the Florida Outboard Motor Boat Association (Fla. Ex. 250, D. 383, R. 9068). He was an enthusiastic supporter of the annual Biscayne Bay Regatta. He contributed to the support of Regattas and gave the Edward H. R. Green Star Island trophy for outboard motor races. This was a very valuable trophy and much sought after, and small replicas thereof were annually given for keeps to the annual winners (D. 356, R. 8397).

So while it does appear as the Master found on page 20 of his Report that in Massachusetts and Florida Green took an active interest in yachting and boating and owned a number of boats and gave trophies for water sports, it is a fact shown by the record that long prior to his death he sold off all of his Massachusetts boats except one, which was unusable so far as is disclosed by the record evidence, and there is no evidence to the effect that his interest in yachting and boating and giving of trophies for water sports in Massachusetts continued to the end; while on the other hand it is a fact established by the record that he continued to own boats in Florida as long as he lived, and these boats were kept manned and ready for use at all times, and that he continued to manifest his interest in yachting and boating in Florida waters by giving trophies for water sports; and this variation in interest between the two places is not disclosed by the Master's Report.

EXCEPTION III.

"This defendant excepts to the finding stated in the first full paragraph on page 20 of the Master's Report, as follows:

'He cared nothing for society and never went to social functions,'

because the Master failed to find that in Florida, Green manifested an interest in social functions given by himself and wife."

Green and his wife entertained quite frequently in their Star Island home in Florida (D. 352, R. 8260). They generally gave two elaborate parties a year (D. 351, R. 8243), and a number of lesser parties (D. 351-2, R. 8244). They had friends in for dinner from time to time and to see the movies (R. 8275). Mrs. Green entertained with luncheons and teas occasionally (D. 351-2, R. 8250, D. 354, R. 8341). Of the two elaborate parties given annually, one was jointly by Green and his wife, and the other by Mrs. Green alone (D. 351-2, R. 8243, D. 354, R. 8342). These were attended by both men and women, and Green was consulted as to arrangements (R. 8244). Sometimes he would sit in his wheel chair in the reception room and greet the guests as they arrived (R. 8260). At other times he would watch from the balcony (D. 351-2, R. 8247), and on one occasion there was a floral screen constructed in the niche above where he could see without being seen (D. 350, R. 8208). For the outstanding social function given in the Green home on Star Island, Miami Beach, the caterer's bill was approximately $2200 (D. 351-2, R. 8246), and the bill for the electrical display was in excess of $6800 (D.

356, R. 8386; Fla. Ex. 111, D. 353, R. 8326). It was about the most elaborate party ever given in the home in Miami Beach (D. 355, R. 8379; D. 351-2, R. 8247; D. 352, R. 8260). Green issued the orders for the lighting job, watched the work, and took much interest in it (D. 355, R. 8378-80). When it was over he regarded it as a success and was much pleased, and expressed his appreciation to the caterer for her work in making it an outstanding occasion (D. 351-2, R. 8249; R. 8254). It could hardly be claimed that Green was interested in society in a broad sense, but the record establishes the fact that in his home in Florida to a limited extent, he was interested in those social events given by his wife and by the two of them jointly.

EXCEPTION IV.

"This defendant excepts to the finding stated on page 20 of the Master's Report as follows:

> 'He had no religious affiliations, but contributed substantial sums to charitable organizations wherever he happened to be,'

because the said finding does not inform the Court of the decline of Green's interest in and contributions to charitable organizations in Massachusetts, and his continued interest in and contributions to religious and charitable organizations in Florida."

In 1936 Green contributed $750 to the Texas Memorial Museum, and this was the only contribution made to any organization in Texas after 1921 (Mass. Ex. 59-C,

D. 146, R. 3429). His contributions to organizations in New York after 1928 totalled less than $100, the last of which was in the amount of $5.00 on April 27, 1932 (Mass. Ex. 59-B, D. 144, R. 3427).

The only contributions made by Green to charitable organizations in Massachusetts after 1928 as shown by the record, were as follows:

December 2, 1930—Red Cross	$10.00
November 2, 1931—Disabled American Veterans	25.00
November 27, 1931—Red Cross	10.00

making a total of $45 to charities in Massachusetts after 1928 (Mass. Ex. 59-A, D. 143, R. 3426). He made no contribution to religious organizations in either Texas, New York, or Massachusetts after 1928.

Green's religious and charitable contributions in Florida after 1928 were as follows:

February 1, 1929—Red Cross	$ 1.00
April 1, 1929—Community Chest	1000.00
March 3, 1930—Community Church	250.00
May 23, 1930—St. Patricks Church	100.00
December 24, 1930—Miami Empty Stocking Fund	500.00
January 20, 1931—American Legion	10.00
February 6, 1931—Community Church	250.00
January 14, 1932—Temple of Israel Sisterhood	10.00
February 3, 1932—National Council of Jewish Women	10.00

February 5, 1932—Dade County Community Chest	250.00
March 4, 1932—Miami Beach Community Chest	250.00
April 1, 1932—Miami Unemployment Fund	15.00
February 28, 1933—Miami Community Chest	1000.00
May 5, 1933—Jackson Memorial Hospital of Miami	5000.00
March 17, 1934—Community Church	250.00
February 1, 1935—Community Church	250.00
March 23, 1935—St. Francis Hospital	100.00

(Fla. Ex. 25, D. 156, R. 3576).

These contributions to the work of religion and charity in Florida were not large, it is true, but they continued long after his contributions to like purposes in other places had ceased, and constitute one of the small indications of his interest in and attachment for community welfare in the place where he had established the only home of which he was the sole owner, and is indicative of his regard for his Star Island home as his principal home.

EXCEPTION V.

"This defendant excepts to the finding stated in the second paragraph on page 27 of the Master's Report as follows:

> 'With few exceptions, in substantially all deeds, papers, and legal documents, he described himself as of Terrell, Texas,'

> because the Master failed to find that in a substantial number of deeds, papers and legal documents made and executed both by and to Green during his last few years in Florida, he described himself and was described as of 46 Star Island, Miami Beach, Dade County, Florida."

In many written instruments executed both by and to Green during the last few years of his life, including deeds, contracts, mortgages, legal documents, application for motor vehicle registration, and for motor vehicle title certificate, some of which were sworn to by him, he described himself and was described as a resident of Star Island, Miami Beach, Dade County, Florida. His applications for motor vehicle title certificate gave his residence as 46 Star Island, Miami Beach, Dade County, Florida, and were sworn to by him as being true. (Fla. Exs. 293-320 inc., D. 384, R. 9171-9323 inc., also D. 359-60, R. 8451; Fla. Exs. 293, D. 384, R. 9171; 294, D. 384, R. 9176; 295, D. 384, R. 9181; 296, D. 384, R. 9184; 297, D. 384, R. 9187; 299, D. 384, R. 9202; 300, D. 384, R. 9204; 304, D. 384, R. 9224; 305, D. 384, R. 9230; 308, D. 384, R. 9254; 310, D. 384, R. 9271; 311, D. 384, R. 9277; 312, D. 384, R. 9279; 314, D. 384, R. 9291; 315, D. 384, R. 9295; 316, D. 384, R. 9298; R. 9182, 9185, 9213, 9216, 9221, 9202, 9206; Fla. Ex. 300, D. 384, R. 9208-9).

His last application for motor vehicle title certificate was dated January 21, 1936, and gave his address as Star Island, Miami Beach, Dade County, Florida, and was signed and sworn to by Edward H. R. Green (Fla. Ex. 320, R. 9323). He executed and accepted deeds and other documents wherein his residence was stated as

Dade County, Florida (Fla. Exs. 298, D. 385, R. 9193; 306, D. 385, R. 9236; 307, D. 385, R. 9247; 313, D. 385, R. 9283; 317, D. 385, R. 9301; 318, D. 385, R. 9312).

On April 14, 1927, he entered into a co-partnership agreement, which was sworn to by him, in which his residence was stated Dade County, Florida (Fla. Ex. 163, D. 365, R. 8630). On April 2, 1928, he as Vice President made application for certificate of incorporation of a Florida corporation in which his residence was stated as Star Island, Miami Beach, Florida, and was sworn to by him. (Fla. Ex. 164, D. 365, R. 8635). On January 20, 1931, Green, joined by his wife, executed a deed to property in which they stated they were residents of Dade County, Florida, which deed was duly acknowledged and sworn to before a Notary Public (Fla. Ex. 313, D. 385, R. 9283). The last deed executed by Green was dated May 11, 1935, and was duly acknowledged and sworn to by him and his wife before a Notary Public, in which they were described as of the County of Dade and the State of Florida. On March 2, 1932, Green executed a manager's oath in connection with the operation of the boat Friday, which gave Miami as the home port, and described him as of Miami Beach, County of Dade, State of Florida, which was duly signed by E. H. R. Green and sworn to before a Notary Public.

Thus it appears that while in former years in substantially all deeds, papers, and legal documents, he described himself as of Terrell, Texas, in the last few years of his life and with particular reference to the period covered by his residence in Florida, he described himself and was described in many deeds, papers and legal documents as of Star Island, Miami Beach, Florida.

EXCEPTION VI.

"This defendant excepts to the finding stated in the second full paragraph on page 27 of the Master's Report as follows:

> 'And the registration of his yacht and numerous boats showing Galveston, Texas, as the home port,'

because the Master failed to find that the boats acquired by Green in his later years were registered in Florida with the home port shown there."

Green's yacht, United States, and his earlier boats, were in fact registered in Texas with their home ports shown as Galveston, but his boats acquired after the establishment of his home on Star Island were registered in Florida with their home port shown as Miami, Florida. (D. 359-60; R. 8450-1; D. 364, R. 8605; Fla. Ex. 112, D. 354, R. 8369; D. 354, R. 8360).

This is significant as another indication of Green's transfer of interest to Florida.

EXCEPTION VII.

"This defendant excepts to the finding of the Master stated on page 35 of the Master's Report wherein he found that on Green's first visit to Round Hills in August, 1917, he determined to build there a monumental home, because such finding is contrary to the evidence."

On Green's first visit to Round Hills, after his marriage in 1917, he planned various developments on the estate property (D. 305-7, R. 6520, et seq.), but according to his own statement he did not at that time plan to build a house to live in himself. When asked if he so intended, he replied: "Oh, no, I never will erect a house there; that is my house * * *" pointing to his boat (D. 307, R. 6570). According to his own statement he did not, at that time, determine to build a home but merely planned other developments.

EXCEPTION VIII.

"This defendant excepts to the finding stated in the last paragraph on page 35 of the Master's Report, as follows:

'From 1918 to 1921 the development of this property was his principal occupation * * *.'

because: (a) such finding is contrary to the evidence; (b) the Master failed to find that from 1918 to 1921 Green's principal occupation was the management of the great estate left by his mother Hetty Green, of which he was the sole trustee."

It is not fair to say that from 1918 to 1921 the development of the Round Hills property was Green's principal occupation. During that period he was living in New York where he devoted his time to his business interests, including the management of the Hetty Green estate, of which he was trustee, and even while staying

in Massachusetts he made weekly trips back to New York looking after his business interests. It is a fact shown by the record that he was interested in the development of the Round Hills property from 1918 to 1921, but by no means was that his principal occupation (D. 121, R. 3062; New York Ex. 39, D. 129, R. 3221; D. 319, R. 6785).

EXCEPTION IX.

"This defendant excepts to the finding stated in the second paragraph on page 36 of the Master's Report, as follows:

'But with this exception retained the whole estate of about 270 acres up to the time of his death,'

because the Master failed to find that Mrs. Wilks and Green jointly owned and retained about 130 acres of the Round Hills property together with the improvements thereon including the Round Hills House."

The statement here excepted to is incorrect in that Green owned only a one-half undivided interest in the estate property consisting of about 130 acres. In other words, he did not own the entire 270 acres and could not retain that which he did not have (D. 296-8, R. 6344, et seq. D. 298, R. 6559-6561; Fla. Ex. 30, D. 320, R. 6810).

EXCEPTION X.

"This defendant excepts to the finding stated on page 42 of the Master's Report as follows:

> 'His remains were brought there from Lake Placid for the funeral service, and Mrs. Green continued to occupy Round Hills for six months after his death,'
>
> because: (a) it has no evidentiary value in determining the issue involved here; (b) there was no evidence that Green requested that his remains be brought to Round Hills for funeral services."

If a man's domicil is to be determined by his habits of life, then what is done with his body and how his property is used after his death has no bearing on the determination of that question. This is particularly true in the instant case because there is nothing in the record to indicate that Green desired his remains to be carried back to Round Hills for funeral service nor that it was his wish that his widow occupy the Round Hills house for six months after his death. Apparently, however, the facts stated in the Master's Report, to which this exception is directed, influenced him to some extent in arriving at the finding and conclusion that Round Hills was Green's principal home at the time of his death and this illustrates the weakness of the support for that ultimate finding and conclusion.

EXCEPTION XI.

"This defendant excepts to the findings stated on page 42 of the Master's Report as follows:

'Between 1917 and 1926 Green [illegible] on the Round Hills [illegible] each summer.

count and maintenance $6,688,639.55 (D. 268),'

because the Master failed to further find and inform the Court that the said amount included large sums of money spent on radio, aviation, Whaling Enshrined, and other activities not connected with Round Hills as a place of residence."

Green expended on the Round Hills estate on both capital account and maintenance the sum of $6,688,639.55 between 1917 and 1936, as found by the Master, but by far the greater part of that amount was expended on his experimental projects and activities connected with the memorial features of Round Hills and not on the Round Hills house as a place of residence (Mass. Exs. 410, 410A, 410B, 410C, D. 264-7, R. 5808 et seq.). The said amount was made up as follows as shown by the record:

Round Hills House	$ 785,323.42
Expense for running same	924,037.89
Round Hills Farm	616,127.44
Expense in connection with same	2,269,400.16
South Wharf Property	133,314.77
Expense	170,432.65
Machine Shop, South Wharf	65,487.00
Round Hills Radio—Expense	1,524,460.31
Whaling Enshrined	132,432.94
Round Hills Hotel	66,177.40
Expense in connection with same	1,445.57
	$6,688,639.55

A large part of the expense of operating the Round Hills Farm was for filling in and maintaining the aviation field and the airport (D. 328, R. 6967-9). Exclusive of the memorial and experimental projects and those things not usually found in connection with an exclusive home, no more was spent on the Round Hills house and its upkeep than was spent on the Star Island home and its upkeep and expense of operation; and it is an unfair comparison and argument to include those activities which have nothing to do with a home as such, in order to make it appear that his interest in Round Hills was greater than that in Star Island.

EXCEPTION XII.

> "This defendant excepts to the findings stated on page 42 of the Master's Report, as follows:
>
> 'He * * * never openly acknowledged Round Hills as his legal residence,'
>
> because the Master failed to find: (a) that Green never in any manner acknowledged Round Hills to be his legal residence; (b) that in every instance where the subject was discussed, Green invariably acknowledged that Round Hills was not his legal residence."

The statement here excepted to is objectionable because of the intimation that in some way at some time Green might have acknowledged Round Hills as his legal residence without openly doing so. Such is not the fact. He never in any way acknowledged Round Hills as his legal residence, but on the contrary consistently when

the opportunity presented itself stated that he was not a legal resident of Massachusetts.

In 1922 Green was urged to run as a Republican for Congress in Massachusetts in the district in which the Round Hills place is situate. He acknowledged the solicitation as a very great honor, but declined, saying:

> "It is impossible for me to do it because I am a resident of Texas." (D. 89, R. 2725).

In the fall of 1924 Green was asked why, with all the work going on at Round Hills, he did not stay there for Christmas and New Year and help supervise the work. Green replied:

> "'Neyland, I cannot do it. I must leave before Christmas,' and he said, 'You know I can't stay in Massachusetts six months. I am afraid they will claim me as a resident and tax me accordingly, and that I want to avoid. Also, I have bought property in Florida and I am anxious to get down there and start developing.'" (D. 316, R. 6722).

In 1925 the citizens of Dartmouth, Massachusetts, wanted to elect him to some honorary position, which he refused giving as his reason:

> "It would be rather strange if they elected a legal resident of Texas to an office up here." (D. 89, R. 2734).

On November 18, 1926, Green wrote Miss Amelia H. Jones of New Bedford, Massachusetts, in response to

a request that he increase his contribution to community funds in New Bedford, in which he said:

> "I appreciate very much the sentiment expressed in your letter, but as I am really not a citizen of New Bedford, and am called upon for the community funds in both Florida and Texas, where I have homes, and, furthermore, as the people in Florida have suffered as much or more than those in New Bedford, after careful consideration I do not feel that I can consistently increase my donation for New Bedford over that of last year * * *." (Tex. Ex. 332, D. 155, R. 3553).

This letter is important in that it was a statement from Green in writing that he was not a citizen of New Bedford, Massachusetts.

In 1928 Green told Commissioner Long of Massachusetts that he wanted to consider himself as a resident of Texas, and while he felt very kindly toward Massachusetts he was not of the opinion that the time had arrived when he wanted to establish himself as a citizen of Massachusetts and a taxpayer. (D. 339, R. 7077).

In 1929 Green was suggested for appointment to fill a vacancy on the Federal Radio Commission from New England, which he refused, giving as one reason that he spent only summer months in New England. (D. 185, R. 4573).

On one occasion Green was at Round Hills as late as the 17th or 18th of December. He came in from New Bedford, and said that he heard while in New Bedford that they were pleased to see him there so late; that

they thought he was going to stay for Christmas and that they would catch him, but he was going to fool them and leave before the time was up. (D. 260, R. 5709).

On January 19, 1935, the American Legion Texas Centennial Committee by A. Garland Adair, Chairman, issued to Green a certificate of distinguished service to Texas, in which Green's residence was shown as Massachusetts. On January 15, 1935, Green wrote Mr. A. Garland Adair, Chairman, American Legion Texas Centennial Commission, acknowledging receipt of his letter of the 10th and the certificate of distinguished service to Texas, for which he sincerely thanked Mr. Adair and the other gentlemen who conferred that honor upon him, and assured him of his great appreciation. As to his residence being in Massachusetts he wrote:

> "However, I note that my residence is shown as Massachusetts. That is not correct, as I have never changed my legal residence from Terrell, Texas, and if it is not too much trouble, I would thank you to make the change. I am returning the certificate under separate cover." (Texas Ex. 18-A, D. 49, R. 1042).

This happened just a little over a year before Green's death, and we find him declining to accept the certificate with his residence stated as Massachusetts, whereas in many legal documents in the latter years of his life, such as deeds, mortgages, contracts, bills of sale, applications for motor vehicle registration, and sworn applications for motor vehicle title certificate, some of which were executed by him and others executed to him, his address was shown as Miami Beach, Dade County, Florida.

The Master should have said that on numerous occasions Green openly acknowledged that Round Hills was not his legal residence.

EXCEPTION XIII.

> "This defendant excepts to the finding stated on page 43 of the Master's report, as follows:
>
> 'He was confined to the house more frequently and his activities were greatly curtailed or discontinued, although his interest survived,'
>
> because the Master failed to find that as his activities in Massachusetts were curtailed or discontinued and his interest declined, his activities and interests in Florida increased and continued."

The statement here excepted to refers to Green's activities and interest at Round Hills from and after September, 1932. There is much evidence in the record that many of his projects at Round Hills were abandoned and that his interest in things there very materially decreased.

He lost his interest in radio at Round Hills (D. 248, R. 5471) and radio was abandoned (R. 6703, et seq.). His golf course was abandoned (R. 7043). The swimming pool was allowed to run down and was abandoned (R. 6977). The farm was no longer of interest to him and throughout the time Mr. Tulloch was his Farm Superintendent from 1932 to Green's death, Green did not

speak to him about his work. When horses on the farm died, they were not replaced (D. 340, R. 7093-4).

The airport was a disappointment to him and he lost his interest in it (D. 341-2, R. 7117; D. 91, R. 2765).

He lost interest in the experiments of M. I. T. and ceased making contributions thereto (D. 323, R. 6845; D. 248, R. 5472; Mass. Ex. 59a, D. 143, R. 3426; Florida Exs. 31, 32, 33 and 34, D. 324, R. 6862, 6866, 6868 and 6870).

After 1928 his contributions to local community projects in Massachusetts gradually declined and finally ceased. He resigned from Massachusetts clubs and afterwards lost practically all interest in Round Hills (D. 323 and 342, R. 6845 and 7123).

In 1929 he stated that he felt his work at Round Hills was drawing to a close (R. 2768). He refused to aid the City of New Bedford, notwithstanding the urgent plea made to him to that effect (Texas Exs. 364 and 365, D. 96, R. 2850-1). His attitude toward Round Hills in his latter years was one of indifference and disinterest, and truly the statement of Witness Vander, an employee of Green's, that Green had lost all interest in Round Hills has support in the record (D. 341, R. 7118).

EXCEPTION XIV.

"This defendant excepts to the finding stated in the first paragraph on pages 43 and 44 of the Master's Report, as follows:

'While there, Green purchased two adjacent lots for $120,000, one of which contained a

yacht club which he remodeled into a dwelling for the following season.'

because: (a) the Master failed to find that the club house was razed and a dwelling erected on said lot, new in every respect except that the walls of the reception room of the club house were retained and formed the walls of the living room in the dwelling so erected; (b) the Master failed to find that the dwelling erected on said lot was designed and constructed as a home for Green and his family and so used from the time of its occupancy in 1927 until his death."

The statement here excepted to is incorrect in the first place because it is not true that the yacht club was remodeled into a dwelling. The club building was torn down and a dwelling erected on the club property site, new and complete in every respect except that only the walls of the reception room of the club house were retained and formed the walls of the living room in the residence. (Fla. Ex. 60, D. 343, R. 7929; D. 345, R. 8056-7). This was done because Green was very fond of the plan of the reception room and wanted to adopt it into the plan of his residence for a living room (D. 249, R. 5513), although the old club building could have been discarded and the residence built anew throughout at no greater cost (R. 8057). So it is not fair or even true to say that the yacht club was remodeled into a dwelling, when in fact only the walls of one room were retained and no more.

In the next place it was not remodeled into a dwelling for the following season, but instead a residence was constructed as Green's permanent home and was so used

by him and his family from the time it was occupied in 1927 until his death. The first work was started in 1925 and completed in 1926. No effort was spared to make the Star Island home attractive and livable. Architects were employed to prepare plans for the building, and additions and improvements were made from year to year, and very large sums of money were expended in carrying out Green's personal ideas as to a home, all of which shows that it was not intended as a dwelling for the following season as stated by the Master, but rather that it was his plan and purpose to make this his permanent home.

When Green bought his first lot on Star Island in 1924 he employed an outstanding landscape architect to develop and beautify his grounds and establish a garden in keeping with the gardens of the best homes in that community, and that employment was continued from that time until Green's death. In time Green had and thereafter maintained one of the most beautiful and outstanding exotic gardens in all of the greater Miami area. He loved his garden and enjoyed having visitors view and admire it from the driveway through Star Island, but the public was not admitted to the privacy of his grounds, at the entrance of which he maintained a sign, "Private." There was nothing about his Star Island home or grounds to indicate anything other than a private residence and a real home.

EXCEPTION XV.

"This defendant excepts to the finding stated in the first incomplete paragraph on page 44 of the Master's Report as follows:

> 'During the succeeding years until his death, Green's average stay in Florida was about four and one-half months between January and May,'
>
> because: (a) the Master failed to find the steady increase in time spent by Green in his Star Island home from the time it was first occupied in 1927; (b) the Master failed to find that for the period beginning with 1928 down to June 8, 1936, Green spent more time in Florida than in Massachusetts; (c) the Master failed to find that Green spent his last three Christmases in his Star Island home, Miami Beach, Florida."

The statement here excepted to is manifestly unfair to Florida, because it gives only an estimated average of the time spent by Green in Florida from the time he occupied his Star Island home until his death. And because this estimated average was less than the estimated average time the Master found that Green spent in Massachusetts, obviously the Master considered that fact as having an important bearing on Green's attitude toward the two places in respect to the question of which was his principal home. After Green became established in his Star Island home his interest steadily increased, as shown by the many changes and improvements made, and by his community and business activities; and thereupon he gradually began the practice of coming to Florida earlier in the fall and staying later in the spring or summer. These are some of the ways in which a man's interest is shown in his home, and if it is proper to make comparisons as to the time spent in two or more homes, in fairness the facts should be stated which would in-

dicate an increase in interest. The time spent by Green at Round Hills from the completion of the Round Hills house until his death, varied very little from year to year, whereas the time he spent in his Star Island home increased steadily year by year from 1927 until 1934, when he spent there a little more than six months. (Fla. Ex. 108, D. 351, R. 8234). The last two years he was there he probably would have stayed longer, but was sent away by his doctor. (D. 108, R. 7363-4). He stated that he would like to spend even more time in Florida (D. 350-1, R. 8214), and that every time he came to Florida he liked it better (D. 316, R. 6724). After the year 1927 he actually spent more time in Florida than any other place (Fla. Ex. 108, D. 351, R. 8234; Mass. Exs. 18, 57, 460; D. 139, 333, R. 816, 3407, 7551), and he spent his last three Christmases in his Star Island home in Florida. (Fla. Ex. 108, D. 351, R. 8234).

These facts unmistakeably indicate a growing attachment for his Florida home and that he had come to regard it as his principal home.

EXCEPTION XVI.

"This defendant excepts to the Master's Report because he failed to find or show: (a) the progressive building up of Green's Star Island home; (b) that in 1927 it was completely remodeled for further comfort and to satisfy Green's requirements; (c) that in 1928 and 1929 further extensive additions and alterations were made; (d) and in 1931 an entire new wing was added at a cost of approximately $85,000, which

wing became the living quarters of Green and his wife; (e) that said Star Island home was kept in A-1 condition until Green's death."

We deem it important that the Court be informed as to the progressive development of Green's Florida home. He came to Florida first in 1923 on orders of his personal physician in New York. He liked it here and it did not require his doctor's orders to get him back. He came again in 1924, and after careful investigation as to a suitable location for a home, purchased one lot on Star Island. He came again in 1925 and purchased two additional lots adjoining his first lot on Star Island. He immediately employed a landscape architect to develop this property and also employed an architect to plan his future home. Contract was awarded for approximately $84,000. The construction of his residence was somewhat delayed on account of an embargo which made it difficult to secure building material (Fla. Ex. 61, D. 343, R. 7933), and it was not completed until May, 1926, at a cost of approximately $114,000 including extras. When Green came to Florida in 1926 he did not move into his new residence (Fla. Ex. 66, D. 343, R. 7945), but employed a Mr. Raphael of New York as Superintendent in charge of alterations and remodeling (Fla. Ex. 66, D. 343, R. 7945), and again employed the J. B. Orr Construction Company to make further alterations at a cost of approximately $100,000 (D. 344-5, R. 8058; Fla. Ex. 69, D. 343, R. 7956). The work and material was the best that money could buy (D. 345, R. 8059). Green manifested his interest in the development of his Florida home by showing his plans to his friends in the North, and discussing the working out of details as to the different rooms with reference to the beauty, comfort and

convenience he had in mind for his home there (D. 91, R. 2763-4; D. 316, R. 6723). In 1928 additional improvements were made at a cost exceeding $70,000. Alterations were made in the main house and servants' quarters were built (D. 345, R. 8059; Fla. Ex. 81, D. 344, R. 7994). Again the work was exceptionally fine and the tile work very elaborate (D. 345, R. 8060). In 1929 Green wrote his architects in Miami enclosing a sketch of proposed changes he again desired made to his Star Island home, with the request for suggestions from them to make it more comfortable, the same as if it had been their own place (Fla. Ex. 90, D. 344, R. 8022). Accordingly, alterations were made that were pursuant to plans worked out by his architects to meet his requirements (Fla. Exs. 91 and 92, D. 344, R. 8025 and 8029). In 1931 a new wing was added to the Star Island residence at a cost of approximately $85,000 (D. 346, R. 8087; Fla. Ex. 98, D. 344, R. 8038). This wing became the living quarters of Green and his wife, and consisted of a corridor connecting the main house to the new wing, a large living room, two master bedrooms on the second floor, a sunporch, two large baths, and elevator and staircase (D. 344, R. 8027). Again the material was the best that money could buy (D. 346, R. 8087). The old elevator was replaced by a new Otis elevator (D. 346, R. 8090-1). The floor plans were the personal ideas of Green (R. 4113). The home as finally completed cost nearly three-quarters of a million dollars (Fla. Exs. 4 and 98, D. 151, R. 3496 and 8038), was one of the finest in the community, and was kept in A-1 condition up to the time of Green's death (D. 91, 346, 361, 368, and 372; R. 2761, 8103, 8490, 8689, and 8842). He had his monogram consisting of two G's interwoven in special design

at the main entrance to his Star Island home (D. 347, R. 8126; Fla. Ex. 103, D. 347, R. 8127), and worked into the floor tile at both entrances and in concrete over the main entrance to his home (D. 347, R. 8126 et seq.; Fla. Exs. 102 and 117, D. 347 and 360, R. 8124 and 8460). He also had his monogram of two G's painted on the panels of the elevator shaft (D. 348, R. 8167). There were also what appeared to be his crest and coat of arms worked in tile at the main entrance to his home. The furniture in the Star Island house was specially designed and custom-built to reflect the individuality of the particular room in which it was placed (D. 347, R. 8114-5; D. 406, R. 9713-5). Some of it came from the factory in Massachusetts and the other from the markets of New York, or wherever he could find just what suited the requirements (R. 8113-5; Fla. Exs. 73, 77, 78, 121, 122 and 123; D. 343 and 360, R. 7971, 7981, 7986, 8468, 8473, and 8475). The grounds were beautifully landscaped and kept in excellent condition at a cost of $12,000 annually (D. 349, R. 8196). There was no finer landscaping in the Miami area (D. 350, 381-2, R. 8202, and 9022). Green was fond of his gardens and flowers (D. 367 and 382, R. 8677 and 9022), and wanted to see his flowers blooming when he arrived each year (D. 349, R. 8200).

EXCEPTION XVII.

"This defendant excepts to the finding stated in the last sentence of the first incomplete paragraph on page 45 of the Master's Report, as follows:

'The house contained no library, no framed pictures, or mementoes of his ancestors, or

articles of a sentimental nature or personal association as at Round Hills,'

because: (a) the Master failed to find that Green's Star Island home contained a library; (b) that it contained a photograph of his mother; (c) that it contained oil paintings of himself; (d) that it contained articles of a sentimental nature to him."

The evidence shows that the Star Island home had a library consisting of approximately 850 volumes (Tex. Ex. 327, R. 4052, 4098). Green kept a photograph of his mother, Hetty Green, in his Star Island home (R. 8137). The Star Island home also contained two oil paintings of Green himself and several photographs of his wife. On the walls of Green's bedroom in the Star Island home were four framed prize awards presented to him in 1934 by the National Stamp Association of New York for his stamp collections which he prized highly (R. 8168-9), and it was in his Star Island home that he kept his yachting trophies (Tex. Ex. 327, R. 4102). So the Star Island home did contain a library, framed pictures, a picture of his mother and articles of a sentimental nature and personal association to Green.

EXCEPTION XVIII.

"This defendant excepts to the finding stated on pages 45-46 of the Master's Report, as follows:

'Green also had several automobiles for himself and Mrs. Green containing Florida

> and Massachusetts license plates, which were brought from Round Hills to Star Island and sent back at the end of the season,'
>
> because the Master failed to find that some of the automobiles referred to were purchased by Green in Florida and carried from his home at Star Island to Round Hills and back to Star Island upon his return rather than having been 'brought from Round Hills to Star Island and sent back at the end of the season.' "

It is a fact as stated by the Master that some of the automobiles belonging to Green and Mrs. Green carried Florida license plates and some Massachusetts plates, and it may be true that some of their cars were acquired in Massachusetts, and in that case came first from Massachusetts to Florida and back to Massachusetts, but it is also a fact that some of their automobiles were acquired in Florida and were carried first from Florida to Round Hills and then back to Florida (Fla. Ex. 293, R. 9171; Fla. Ex. 294, R. 9176; Fla. Ex. 297, R. 9187; Fla. Ex. 310, R. 9271; D. 361, R. 8492-3). This is unimportant except that it illustrates the apparent effort to bolster the finding of domicil in favor of Massachusetts.

EXCEPTION XIX.

> "This defendant excepts to the finding stated on page 47 of the Master's Report, as follows: 'Everything he did indicated a seasonal

vacation and relaxation from physical and mental effort,'

because the said statement is contrary to the fact established by the record."

The statement here excepted to is wholly without justification or foundation in fact. In the first place it presupposes that Green needed vacation and relaxation from physical and mental effort. The Master has already found that his principal occupation from 1918 to 1921 was the development of the Round Hills property. If that was at that time his principal occupation, his labors had been completed prior to the time he came to Florida, and so far as the record discloses he certainly put forth no physical effort at Round Hills after that time; and if things were as pleasant for him at Round Hills as the Master's report would indicate, he should have had no mental worries from which he needed either vacation or relaxation. If the use of the term "seasonal vacation" has reference to the season of the year spent in Florida, and if this is a good reason for finding against Florida, the same rule should be applied to Massachusetts, where he spent only a part of the summer and fall each year, sandwiched in between two summer colonies. It could hardly be considered fair to apply one rule to Florida and a different rule to Massachusetts. The only thing that can be said in favor of this statement is that although he was engaged in business in Florida and interested in various phases and activities of community life, it was so pleasant and agreeable here that he needed no vacation or relaxation from his Florida physical and mental efforts.

After he became established in his Florida home he became interested in and supported many phases of the community life, social, political, charitable and religious (Fla. Exs. 179-181, D. 369-70, R. 8753, D. 369, R. 8726). He was financially interested in the Fogal Dry Dock and Storage Company of Miami (Fla. Exs. 158, 163 and 164, D. 364 and 365, R. 8601-8609, 8625 and 8635.) He put over $100,000 in this business and took a personal interest in it (D. 365, R. 8641 et seq.). He was a stockholder in the Miami Beach First National Bank and the First National Bank of Miami (Fla. Ex. 187, D. 370, R. 8771; D. 105, R. 7289-91). He had been a stockholder in the Bank of Bay Biscayne and the Miami Beach Bank and Trust Company (Fla. Exs. 185, 186 and 198, D. 370, R. 8765, 8768 and 8797). He joined a combine to buy up shares of stock in the Bank of Bay Biscayne, and owned 700 of its shares at the time the bank closed. He paid a 100% personal assessment on his stock promptly and without protest (Fla. Exs. 199 and 200, D. 370-1, R. 8799, 8801). He had previously loaned this bank $750,000 (Fla. Exs. 189 to 192, D. 153 and 370, R. 3556 and 8776-84) and agreed to put up $3,000,000.00 if that amount was found sufficient to reopen the bank, but when it was found that more was needed, the matter was dropped (D. 395, R. 9472-5). He described himself as a Florida cracker and a citizen of Miami Beach (D. 366, R. 8659; D. 373, R. 8847, R. 8838, D. 374, R. 8854; D. 366, R. 8661, D. 359, R. 8441). The things he did in Florida were such that the community considered him one of the most enthusiastic citizens of Miami Beach, and he was granted many considerations on that account. (D. 352, R. 8269; D. 380, R. 8975-76; Fla. Exs. 213, D. 378, R. 8933; 212, D. 378, R. 8931; D. 368, R. 8713 et seq.; Fla.

Exs. 228, D. 379, R. 8972; 217, D. 379, R. 8941; 219, D. 379, R. 8950; 147, D. 363, R. 8567; 140, D. 363, R. 8547; 143, D. 363, R. 8555; 144, D. 363, R. 8558; 145, D. 363, R. 8561; 146, D. 363, R. 8564; 148, D. 363, R. 8569, 225, D. 379, R. 8966; D. 368, R. 8711).

In 1933 he was chosen by the Aritists and Writers Club of Miami Beach to be honored at their annual dinner as an outstanding resident who had distinguished himself by his splendid community spirit (Fla. Ex. 284, D. 384, R. 9152). In 1926 he stated he was going to make his home in Miami Beach, and "this will be my home from now on." (D. 371, R. 8830). He frequently referred to his Star Island place as "home" (D. 353, R. 8335; D. 374, R. 8858-9; D. 91, R. 2761; D. 359, R. 8440-1; D. 368, R. 8715-7; D. 373, R. 8850; D. 366, R. 8660; D. 367, R. 8662; D. 395, R. 9478; D. 358, R. 8418; D. 357, R. 8401-2-3; R. 8253-4; Fla. Exs. 329-36; D. 388-9, R. 9389, et seq.) In 1934 Green said to his old Texas friend, Tucker:

> "I have this comfortable home; I have privacy, I can do as I damn please, and this is my home and I expect to live here the rest of my days." (D. 372, R. 8841-2).

Surely in the face of all this and his many other activities which demonstrate his interest in Florida, it cannot be said that everything he did here indicated a seasonal vacation and relaxation from physical and mental effort, unless it be from the things that had come to annoy and worry him at his Round Hills place, in which event it should be considered not against but in favor of Florida as indicating that Florida had come to be his principal home.

EXCEPTION XX.

"This defendant excepts to the findings stated on page 47 of the Master's Report as follows:

> 'Aside from his financial interest in the Fogal Dry Dock and Storage Company, where he kept his boats, and a stock interest in some of the local banks, his life in Florida was typical of an invalid seeking health,'

because the said finding is contrary to the fact established by the evidence."

The things that the Master here seeks to exclude from consideration, that is, Green's interest in the Fogal Dry Dock and Storage Company and his interest in the banks of Miami and Miami Beach, are some of the things that tie a man to a place and which cause him to come to regard his home in that place, if he has more than one home, as his principal home. He did own a one-half interest in the Fogal Dry Dock and Storage Company, a company engaged in the manufacture, repair and storage of boats, but he was not interested in any manufacturing enterprise or industry in Massachusetts, although his Round Hills place was located in close proximity to one of the old manufacturing centers of New England. He did not at any time own any interest in the local banks in the community of the Round Hills place. If it is fair to say that, aside from his financial interest in the Fogal Dry Dock and Storage Company and a stock interest in some of the local banks, his life in Florida was typical of an invalid seeking health, why would it not also be fair

to say that his life in Massachusetts where he had no business interests or connection of any kind, and where he spent only a part of the summer and fall each year, was also typical of an invalid seeking health. This finding, or as we might more properly say, argument, is another effort to boltser up the ultimate conclusion reached by the Master.

EXCEPTION XXI.

> "This defendant excepts to the Master's report because he failed to find that Green disposed of practically all of his boats in Massachusetts and later acquired and kept boats in Florida until his death."

What we said in our discussion under Exception II is applicable to and covers this exception and will not here be repeated.

EXCEPTION XXII.

> "This defendant excepts to the Master's Report because he failed to find that Green, long prior to his death, discontinued giving trophies for water sports in Massachusetts and continued to give trophies for water sports in Florida as long as he lived."

What was said in our discussion under Exception II is applicable to and covers this exception and will not here be repeated.

EXCEPTION XXIII.

"This defendant excepts to the Master's Report because he failed to find that Green, long prior to his death, resigned from and gave up his club memberships in Massachusetts and continued his club memberships in Florida until his death."

This exception has been fully covered in our argument in support of Exception I and will not here be repeated.

EXCEPTION XXIV.

"This defendant objects to the Master's Report because he failed to find that Green, long prior to his death, ceased to make contributions to community projects in Massachusetts and continued to make contributions to community projects in Florida."

After 1928 Green's contributions to community projects in Massachusetts practically ceased. In 1931 he gave $500.00 to the State Reclamation Board (Mass. Ex. 59-A, D. 143, R. 3426). In 1932 he gave $1000 to Wheaton College, but stated that it was to compensate for the trouble caused by one of his wards (Fla. Ex. 365, D. 398, R. 9557). His contributions to the experimental work of M. I. T. continued until 1933 when they were stopped, notwithstanding the earnest pleas for their continuance (Mass. Ex. 59-A, D. 143, R. 3426; Fla. Exs. 31-36, D. 324, R. 6862 et seq.)

During this same period his contributions to Florida community projects increased and continued as long as

he lived. In 1928 he gave $1000 to the Shriner's Convention Fund to advertise Miami Beach and vicinity (Fla. Exs. 269-71, D. 383, R. 9114-20). He subscribed $140 to a publication, Sun-Sea-Ara, advertising Miami Beach (Fla. Exs. 220-1, D. 379, R. 8956-8). He sent the Jaycee Boys' Band on an advertising trip to the North at a cost of $3000 (D. 352, R. 8266, D. 380, R. 8977). He was a member of the Dade County Council, Boy Scouts of America, and subscribed to the Scout oath (Fla. Ex. 233, D. 381, R. 8993), and supported their activities (D. 361, R. 8482). He made small contributions to the Order of Eastern Star (Fla. Ex. 290, D. 384, R. 9164), and Veterans of Foreign Wars (Fla. Ex. 289, D. 384, R. 9161), Dixie Boosters Club (Fla. Ex. 292, D. 384, R. 9167), and to the St. Francis Hospital of Miami Beach in 1935 (Fla. Ex. 25, D. 156, R. 3576).

These were not large contributions, but were all strictly local, indicating an interest in the various phases of life in the community, and as such contributions declined and ceased elsewhere they continued in Florida.

EXCEPTION XXV.

> "This defendant excepts to the Master's report because he failed to find that Green, long prior to his death, gave up and discontinued his photography in Massachusetts."

Green's photographic studio was not operated after 1928. Thus we see another of his prior interests at Round Hills falling by the wayside (D. 305, R. 6507).

EXCEPTION XXVI.

"This defendant excepts to the Master's Report because he failed to find that Green lost his interest in radio in Massachusetts long prior to his death."

We have already shown in our discussion of Exception XIII that not only did Green lose his interest in radio at Round Hills (D. 248, R. 5471), but that it was abandoned (R. 6703, et seq.)

EXCEPTION XXVII.

"This defendant excepts to the Master's Report because he failed to find the gradual decline of Green's interest in the Round Hills Airport."

The airport project at Round Hills was a disappointment to Green (D. 91, R. 2765), and although it was begun with his usual enthusiasm, it eventually "faded out." (D. 341-2, R. 7117).

EXCEPTION XXVIII.

"This defendant excepts to the Master's Report because he failed to find that Green's construction of the Round Hills house was primarily for purposes other than a home."

Prior to the death of Hetty Green, she, realizing that the people around New Bedford were not favorably im-

pressed with her, expressed to her son the hope that he would come there and build a monument to her memory on the Round Hills property (D. 195, R. 4809).

On August 29, 1917, Colonel Green arrived off Round Hills in his steam yacht, "United States." He spoke to Mr. Davis, a contractor, of his plans for Round Hills and wanted plans and estimates made for a number of things (D. 305, R. 6512).

Green said that many people misunderstood his mother, that many inhabitants of that section harbored unkind feelings toward her which he felt were unjustified, and he intended to do all he could to overcome the ill feeling in that section for his mother (D. 313, R. 6671).

In subsequent years he spoke to many people about his plans for making Round Hills into a memorial to his mother and ancestors. This was no secret; he told his old friend, Mr. Corley, that he and his sister planned to commemorate his mother's memory in some way, to establish some sort of memorial to his mother. (D. 15, R. 322). Even the public knew it, as evidenced by the letter from Ralph Hayes, director of the New York Community Trust, who wrote to Green on October 22, 1925, and spoke of this in the following language: "I have been greatly interested in reading the press accounts of your possible plans for making Round Hills into a perpetual memorial" (Fla. Ex. 361, D. 398, R. 9546).

Green told Mr. Emery in 1921 a great deal about his ancestors and the history of Round Hills, and that he was contemplating making a historical spot and wished Mr. Emery to be historian and write a series of articles in connection with various phases of the history of Round Hills and its occupants (D. 299, R. 6384).

He told Mr. Neyland, "I am doing everything I can to make Round Hills attractive as a memorial * * *" (D. 312, R. 6655).

He told Mr. Richter that he kept the Massachusetts place in remembrance of his ancestors (D. 357, R. 8414, 8427).

Green had a huge house erected on the Round Hills property which was designed and built to be a public institution, a part of the memorial idea.

He had Alfred C. Bossom, an architect, draw plans for this huge house to be erected there; he showed these plans to Mr. Davis and asked for an estimate and told him at that time it was to be one wing of a child's institute (D. 307, R. 6571).

Alfred C. Bossom, architect, knew that it was to be an institution and told his employees and associates that it was to be such. Mr. Hartwig, an architect in his employ, laid out the preliminary drawings, made the sketches, and designed the exterior of the house under Mr. Bossom's direction (D. 201, R. 7818). Mr. Bossom told him that it was to be laid out in such a manner that it could later be converted into a hospital or a public institution. Mr. Hartwig testified, "Well, I laid it out with the idea of having a general hospital plan; that is, a plan such as a hospital would be, kind of an H form, with a corridor down the center and an opportunity to lay out into sections as flexible as possible * * *" (D. 201, R. 7819).

The details were worked out for a residence after a general plan was made that seemed feasible as a hospital unit (D. 202, R. 7832).

Mr. Schlabitz, another architect in the employ of Mr. Bossom at that time, worked in designing the Round

Hills house and was told by Mr. Bossom to design it as one that was to be used as an institution at a later date and to "make it look like a big institution." (D. 180, R. 4429). That he succeeded in his purpose is apparent from a view of the property or a glance at a photograph of the Round Hills house (Texas Ex. 342, D. 327, R. 6911; N. Y. Exs. 203 to 205, inc., R. 4767, N. Y. Ex. 210, D. 194-252, R. 4773; N. Y. Exs. 218 to 220, inc., D. 252, R. 5576, et seq., Mass. Ex. 65, D. 174, R. 4351).

Edward Ardolino, the architectural sculptor on the Round Hills job, had to revise his work and make it bolder because (quoting from the testimony of the witness) "* * * Colonel Green direct to me told me that he wanted that work much more bolder than it was because it was not intended for a residence but it was intended for an institution, so we kept on working and working until we make it bolder as he wished to have." (D. 200, R. 7800).

The architect told Mr. Howes, the building contractor, that it was the intention of the owner to use the building for an institution for the public after he had lived in it for a while (D. 175, R. 4364). Mr. Howes never felt that it was being built for a home as there was no personal atmosphere connected with it in any way. (D. 176, R. 4376.)

The interior decorator worked with the architect in harmonizing the woodwork and painting. However, he did not like the woodwork as it looked too much like an institution (D. 173, R. 4324). When he called Green's attention to this, Green told him that he was going to give it to New Bedford for an old ladies' home, and when the interior decorator criticized anything, Green would

reply that it was to be an old ladies' home anyway. (D. 173, R. 4323-4328-4332).

There is some conflict as to just what type of public institution the Round Hills house was to become, but the evidence is overwhelming and uncontradicted that it was conceived, designed, planned, built and decorated to be a public institution (D. 302, R. 6441; D. 317, R. 6731; D. 27, R. 638; D. 39, R. 871; D. 51, R. 1115; D. 22, R. 521; D. 170, R. 4260).

Ultimately Green decided to make it into a museum. He had become tremendously interested in whaling, and often spoke of the fact that his ancestors had been engaged in the whaling business and that was the origin of the Green fortune (D. 299, R. 6386; D. 357, R. 8414, D. 318, R. 6749). He spoke of his intention to make Round Hills a museum on various occasions (D. 396, R. 9482, et seq., D. 315, R. 6695; D. 300, R. 6407-6408; D. 261, R. 5711; D. 196, R. 4824).

Green purchased a great deal of whaling material and a great deal was contributed by interested persons (R. 6716). This material was originally taken to the Round Hills house and some of it stored in the cellar, some in the garages, and some in the attic (R. 6716). There were enough of these materials if it had all been in one place to have formed a large whaling museum (R. 6716). In addition to this, there were miles of anchor chains laid along the driveways in the grounds of the Round Hills estate and masts of old whale ships and other paraphernalia all over the place to remind one of whaling (R. 6728-9 and R. 6966, et seq.). This was in keeping with Green's purpose of establishing a museum, and indicates that he regarded Round Hills primarily as a museum rather than as a home.

Green said he wanted to make Round Hills attractive as a memorial and with this in view engaged in various activities there in furtherance of this purpose, including radio broadcasting, whaling enshrined, aviation, scientific research and the opening of the beaches there to the public. He said he was building it to commemorate his ancestors' name, his mother's name or his father's name, one of the two of them (D. 22, R. 521). He told Miss Berglund that he would like to have the house as a memorial to the Green and Howland families so that the name would live on after he was gone, because he was the last of the Greens (D. 261, R. 5711).

The Round Hills house was always something other than a home, every part of the general plan to make Round Hills a permanent memorial to his mother and his ancestors.

EXCEPTION XXIX

> "This defendant excepts to the Master's Report because he failed to find that Green had his name removed from a stone placed near the main entrance of the Round Hills house."

During the construction of the Round Hills house, Green's monogram, "E. H. R. G." was carved in stone and delivered on the job to be placed over the main doorway (D. 202-3, R. 7832 et seq.) This had not been ordered by Green and was not known to him, but when he became aware of the fact and its proposed use, he ordered his monogram removed, giving his reason that he did not wish his name to appear upon property owned by his mother and ancestors, and that the house was

being constructed for purposes other than a home. (D. 199 to 203, R. 7784 et seq.)

EXCEPTION XXX.

> "This defendant excepts to the Master's report because he failed to find that Green's Star Island Home was the only home of which Green was the sole owner at the time of his death."

Green owned a home in Dallas, Texas, which he disposed of by sale in 1911 shortly after he moved from Texas to New York (D. 240, R. 5346; Tex. Ex. 57, D. 60, R. 1549). He maintained from shortly after his marriage in 1917 until his death, a rented apartment in New York (Mass. Exs. 50-53, D. 169, R. 4222 et seq.; D. 336, R. 4231, D. 123, 124, 169, R. 3094).

The Round Hills house in Massachusetts was built on estate property inherited jointly by Green and his sister, Mrs. Wilks, from their mother, and was jointly owned by them at all times thereafter until he died. (Fla. Ex. 30, R. 3096; D. 124, 297; R. 6344 et seq.; D. 404, R. 7879). Green's Star Island home was built by him at his own expense on land he purchased and paid for himself, and of which he was the sole owner at all times thereafter until his death. Whereas in the Round Hills house he only had a child's undivided interest (R. 7879), the Star Island home was his to do with as he pleased (R. 7880). This, we think, is an important factor to be considered in determining which of two or more homes was the principal home.

EXCEPTION XXXI.

> "This defendant excepts to the Master's report because he failed to find that on numerous occasions both in Florida and elsewhere, Green referred to his Star Island Home as 'Home'."

There are numerous instances in which Green referred to his Star Island residence as "home." In 1926, when it was being constructed, he told Judge Norfleet that he was going to make that his home, and that it would be his home from that time (D. 371, R. 8830). In 1927, the year he first occupied his Star Island residence, he wrote a letter to Oscar W. Maynard, Inc., in which he referred to it as his home (Fla. Ex. 329, D. 388, R. 9390). In 1928, in a letter to S. Daenitz he referred to "my Star Island home" (Fla. Ex. 330, D. 388, R. 9391). In another letter, written from New York in 1928, he referred to "my home on Star Island" (Fla. Ex. 331, D. 388, R. 9394). During the same year, in conversation with a Mr. Richter, at Round Hills, Massachusetts, he referred to his Miami home (D. 357, R. 8416). During the construction of an addition to his Star Island residence in 1928, he told a Mr. Brooks that he was building it for his own home; that he was building it for himself, and that he intended to live there the rest of his life (D. 368, R. 6888-9). He showed his plans for his Star Island residence to a Mr. Newington of New Bedford, and stated that he was building this Florida home, which was to be his permanent home and where he expected to wind up his days (D. 91, R. 2761). On one Sunday afternoon in 1929, while viewing his Star Island home across the bay from the Venetian Causeway, he referred to his home and, in pointing out its beauties, expressed his

admiration with considerable sentiment (D. 358, R. 8417-8). In conversation with a Mr. Keuling of Miami, he referred to his Star Island "home" (D. 357, R. 8401). He told his friend, Mr. Neyland, of South Dartmouth, Massachusetts, that he was building a Florida home (D. 316, R. 6722-3). In talking to a Mr. Bradford of Fairhaven, Massachusetts, he referred to Florida as "down home" (D. 90, R. 2733-7). In 1930, in discussing the need for a park in one section of Miami, he referred to his Florida home (D. 353-4, R. 8334-5).

He expressed his feeling toward his Star Island home in this way:

> "Certainly I will do something—you know this is my home, too—you have been visiting me long enough over there to know it is my home as well as yours—if you people will get that park built, I will build you a swimming pool." (D. 353-4, R. 8334-5.)

He objected to liquor being served at parties in his Star Island home, stating his reason that the home should be kept sacred (R. 8253-4). In 1931, in a letter to the Chief of Police, he referred to his Star Island home (Fla. Ex. 332, D. 388, R. 9395). During the same year, in a letter to the City Manager of Miami Beach, he thanked him for the interest taken "in my Star Island home" (Fla. Ex. 333, D. 388, R. 9396). Again, in conversation in 1931 or 1932, in admiring the beauty of his home and its surroundings, he said,

> "Is not that beautiful? That's God's country. What more can a man ask than to live and

have a home in a place like this?" (D. 374, R. 8858).

In another letter to the Chief of Police of Miami Beach, he referred to his Star Island home (Fla. Ex. 335, D. 389, R. 9400), and the same year, 1932, in a letter to Mr. Wall, President of the Miami Beach First National Bank, he referred to "our home at Star Island" (Fla. Ex. 336, D. 389, R. 9402). Upon his annual return to Florida, it was his usual expression that he was glad to be back home (D. 359, R. 8440-1; D. 368, R. 8715; D. 373, R. 8850). In 1933 he told a Mr. Barrett, an old boyhood friend, of his Florida home. (D. 385, R. 9331-41). In 1934 he told one of his old Texas friends, a Mr. Tucker, that he had his home there in Florida, where he expected to live the rest of his days D. 372, R. 8842). In the fall of 1935, at New Bedford, Massachusetts, Green referred to his home in Florida and stated that he would be glad to get back there and to get away from Massachusetts (D. 361, R. 8496).

Surely these expressions are important in arriving at Green's attitude toward, and affection for, his Star Island home in the determination of which of his homes, at the time of his death, if he had more than one, was his principal home.

EXCEPTION XXXII.

"This defendant excepts to the Master's report because he failed to find that no income tax was assessed against Green by the Commonwealth of Massachusetts."

Massachusetts has an income tax law. It also has a very able Commissioner of Corporations and Taxation, whose duty it is to administer and enforce that law. That Commissioner is a lawyer and a man of broad experience, who stands high as an authority on matters of taxation. In 1928, acting on information which led Commissioner Long to believe that Green was subject to the Massachusetts Income Tax law, he requested and was granted an interview with Green, with the view of procuring from Green a return for income taxes due the Commonwealth of Massachusetts. In that interview had at Round Hills, Green insisted that he was a legal resident of Texas and not subject to the income tax law as an inhabitant of Massachusetts. He stated that he did not wish to regard himself as a legal resident of Massachusetts. In this interview the Commonwealth of Massachusetts, acting through its efficient tax officer, was convinced that Green was not subject to its income tax law as an inhabitant thereof, and no effort was thereafter made to procure from Green an income tax return, or to compel the payment to that Commonwealth of an income tax, until sometime in the year 1936 when a notice addressed to Green was sent to South Dartmouth, which Green never saw and which was opened and read for the first time after Green's death by the administrator of Green's estate, although this diligent tax officer had been in office prior to the building of the Round Hills house and the developments there, and has continued as such officer ever since, and was at all times since 1928 in possession of the same information that prompted him to request the interview which convinced him that Green was not an inhabitant of Massachusetts, nor subject to its income tax law (D. 338, R. 7065-7, and 7165).

This is important to be considered in arriving at a determination of whether Green's habits of living were such as to justify the conclusion that Round Hills was his principal home. Mr. Long, the able, efficient and diligent tax officer in the discharge of his official duties in administering the income tax law of the Commonwealth, visited the Round Hills place, and from his interview with Green on that visit was obviously convinced that Green was only a summer visitor as distinguished from an inhabitant of the Commonwealth, and if that conclusion was justified by what he saw and learned on that occasion, or in any other way in the discharge of his official duties, then it cannot be said that Green's habits of life were such as to justify the conclusion that Round Hills was his principal home.

EXCEPTION XXXIII.

> "This defendant excepts to the Master's report because he failed to find that Green's attorneys advised him that his spending more than six months a year in Massachusetts did not make him liable to Massachusetts for an income tax, and that he did not spend thereafter more than six months in Massachusetts during any one year."

Green was advised by his personal attorney in New York in either 1918 or 1919 that he was not taxable under the Massachusetts Income Tax law (Mass. Ex. 71, D. 215-6, R. 5100). In 1930 Mr. Bullard, an attorney of New Bedford, advised Green that the Massachusetts income tax Act had been amended in a way as to permit him to come to Massachusetts earlier than July 1st

without being liable for the payment of an income tax there (Mass. Ex. 287, D. 225, R. 5175). And his personal attorney, Mr. Pierson, again advised him that he saw no reason why he should not go to Round Hills in June rather than July. (Mass. Ex. 288, D. 225-6, R. 5178). Notwithstanding this legal advice, Green never went to Massachusetts before July 1st until the year 1934.

This shows that it was not altogether for the purpose of avoiding liability to the Income Tax Law of Massachusetts, that he did not go there earlier each year, and is important to that extent.

EXCEPTION XXXIV.

"This defendant excepts to the Master's report because he failed to find that Mrs. Wilks paid one-half the taxes on the Round Hills house except for the first few years after its completion."

From the time of the death of Hetty Green until the Round Hills house was built, the taxes on the Round Hills property were paid from the Hetty Green estate. Beginning about the time of the completion of the Round Hills House and for only a very short period, the taxes were paid by Green alone. After that they were paid one-half by Green and the other half by his sister, Mrs. Wilks. This is important as showing Green's realization of the fact that he owned only a one-half undivided interest in the estate property including the Round Hills house, and should be considered as a factor in determining whether Green properly regarded that as his principal home over the Star Island home of which he was the sole owner.

EXCEPTION XXXV.

"This defendant excepts to the Master's report because he failed to find that when Green left Round Hills at the close of the summer seasons, the house was closed, the doors and windows were protected by storm doors and shutters; the furniture and pictures were covered; the silverware, chinaware, and linen put away; the draperies covered, and the master's kitchen closed."

When the Greens left Round Hills at the close of the summer season, the house was closed, the doors and windows were protected by storm doors and shutters, the furniture and fixtures were covered, the silver, chinaware and linen put away, the draperies covered, and the master's kitchen closed. The house was kept heated to prevent damage from dampness and pipes freezing (D. 94-5, 243 and 251, R. 2796-9, 5383, 5539-40). Many of the household servants were used in both the Round Hills and Star Island houses, but it is just as fair to say that they were carried from Star Island to Round Hills and back to Star Island as to say, as the Master did, that they were carried from Round Hills to Star Island and back to Round Hills.

EXCEPTION XXXVI.

"This defendant excepts to the Master's report because he failed to find: (a) when Green went to Texas he was sent by his mother to attend to her business; (b) when Green moved from Texas to New York in 1911, he was

called back by his mother to attend her business; (c) that when he later went to Massachusetts, it was in response to his mother's request that he there build a monument to her memory."

About 1892 or 1893 Green was sent to Texas by his mother to manage and operate a short line of railroad which was owned by his mother and later known as the Texas-Midland Railroad (D. 13, 24, 30 and 62, R. 297, 578, 674, 1413 and 1731).

In 1910 he was called back to New York by his mother to assist her in the management of her vast fortune. In 1911 he again returned to New York at the call of his mother to assist her in her business affairs, at which time he moved his housekeeper and his household goods and effects from what had been his home in Dallas, Texas, to New York. Prior to the death of Hetty Green she expressed to her son the hope that he would go to Round Hills and build a monument to her memory on the estate property, in an effort to overcome the unfavorable impression she had left in that community by her manner of living, and it is fair to assume that his later activities there were in response to her request, actuated by his love for his mother and the realization that he was using the money she had accumulated. Certainly a dutiful son could not have done less. If this conclusion is justified from all the facts and circumstances, and we urge that it is, then his activities there were due to his affection for his mother rather than his regard for the place as a home. This, we think, is important to be considered in connection with the question as to which of his homes, if he had more than one, was his principal home.

EXCEPTION XXXVII.

"This defendant excepts to the finding of the Master stated on page 48 of the Master's report, as follows:

> 'In 1931 and again in 1933, his friend, Walter Allen, of Terrell, Texas, advised him to change his legal residence from Texas to Florida because of certain pending tax legislation in Texas. After consulting his attorney, Charles W. Pierson, who advised him what legal steps were necessary to make a change of domicile; and that as he had a residence in Florida it would only be necessary to make a formal announcement of his intention—Green did nothing * * *"

because: (a) the proposals to change his legal residence in the particular instances were made for the purpose of avoiding taxes and had no reference to a change of domicile; (b) Green could not have changed his domicile from Texas in 1931 or 1933 for the reason that long prior thereto his domicile had been abandoned and established elsewhere; (c) the said finding is not proper to be considered against Florida in the determination of Green's domicile at the time of his death; (d) the Master failed to find that the incidents stated in said finding should be given no weight in the determination of Green's domicile."

In the first place, both the suggestion from Allen, his Texas friend, and from Pierson, his New York attorney,

had reference to an imaginary change for the purpose of tax avoidance rather than a real change. Green could not either in 1931 or 1933 have changed his legal residence or domicil from Texas to Florida, because at that time neither his legal residence nor domicil was in Texas. He had moved from Dallas, Texas, to New York in 1911, and had not lived in Terrell, Texas, since long prior to 1911, and had not even paid room rent there since 1914. He had had every opportunity to return to Texas and re-establish a home and domicil there prior to the incidents here stated, but had not elected to do so. The correspondence between Allen and Green and between Green and Pierson clearly indicates that the thing they were all interested in was the matter of evading the payment of an income tax under proposed legislation in Texas in the years 1931 and 1932, and that they were not thinking about home in its true sense. If Green had taken any action in response to the suggestion of his friend, Allen, and the advice of his Attorney, Pierson, it would not have been to abandon Texas as his domicil, but merely to declare himself a legal resident of Florida. The Master has elsewhere found that his many declarations as to legal residence were not to be considered, as they were in conflict with his manner of living, and it is mere argument to say that he did nothing to make a formal announcement of his intention, and the Master should not have used this argument against Florida any more than he should have used it against Massachusetts. For if his domicil was in Texas in 1931 and 1933, it was not then in Massachusetts, and there is nothing in the record to justify the conclusion that it was after that time moved from Texas to Massachusetts.

EXCEPTION XXXVIII.

"This defendant excepts to the conclusion stated on page 51 of the Master's Report, as follows:

> 'His intention to return to Texas might be presumed while temporarily residing in New York engaged in the conduct of his own and his mother's business, if he had done nothing inconsistent with the intention to return.'

because: (a) he failed to find that every act of Green's from the time he moved from Texas in 1911 was inconsistent with any intention to return thereto; (b) the residence of Green in New York for a number of years after returning there was as permanent as it had been in Texas."

There is nothing in the record in this case from which it might reasonably be presumed that Green, while living in New York from 1911 intended to return to Texas and re-establish his home there, other than mere declarations which the Master has correctly found to be unreliable in a consideration of the question of domicil. When he left Texas and moved back to New York, he disposed of his every business enterprise except the railroad, which was owned by his mother, and disposed of his home in Dallas and all of his real estate holdings that could be sold, and as an indication of his attitude toward the question of residence, and as a tacit admission on his part that he was severing all connections with Texas, he resorted to the subterfuge of renting a room

in Terrell, Texas, where he had not lived for several years, and which he never saw, and about which he joked with his friend, Mrs. Stafford. If he had any intention of returning to Texas to live, he had every opportunity to do so after his mother's death and after he came in possession of his share of her estate. After 1921 Texas offered certain health advantages, and his Texas friends, including Dr. Buie, endeavored by every argument at their command to persuade him to establish a home there, but he refused. Obviously, he had his own reasons for not going back, and the fact that he did not return when he had every opportunity to do so, and no reason to prevent him from re-establishing a home there, justifies the conclusion that he never intended to return to make Texas his home after leaving there in 1911.

There is no more justification for referring to his residence in New York as temporary than that in Texas. He was sent to Texas by his mother in the first instance, and remained there under her control and domination until she saw fit to call him back to New York, when he obeyed her call and returned to New York just as he had gone to Texas to serve her, and so remained in New York until her death, serving her just as he had remained and served her in Texas, and continued to live in New York after her death and maintained living accommodations there throughout the remainder of his own life. It is, therefore, fair to conclude that his residence in New York was as permanent as it had been in Texas.

EXCEPTION XXXIX.

"This defendant excepts to the conclusion stated on page 53 of the Master's report as follows:

> 'To him domicile was a mental state where he could obtain certain political advantages and freedom from taxation. He was not interested in making a home for posterity because he and his sister were the last of their line.'

because the said conclusion is argumentative."

The objection to the conclusion here excepted to is that it is argumentative. It is doubtful if Green in fact gave any thought to domicil. Few people do. Man establishes his home and the law fixes his domicil. It is immaterial whether Green was interested in making a home for posterity, but the question of importance here is whether he was interested in making a home for himself, and if he had more than one home, which was his principal home.

EXCEPTION XL.

"This defendant excepts to the conclusion stated on pages 53 and 54 of the Master's report as follows:

> 'He did have some unformulated notion of leaving a memorial to his mother, his sister and himself, and the granite edifice at South Dartmouth on the land that had been in the family for generations surrounded by maritime antiquities in which the Green fortune originated, with mementoes suggestive of his whaling ancestors, formed to him the most appropriate memorial he could leave

after death, and the most permanent home he could enjoy while living,'

because the same is argumentative."

The only unformulated notion or plan Green had in leaving Round Hills as a memorial to his mother was the character of use to which it should be devoted. From the time of his first visit to Round Hills in August, 1917, until his death, his every act indicated that of memorializing his mother, and his plans were formulated and executed around that central thought. Its use as a residence was of secondary consideration. Not only was the house planned and built for a public institution, but many of the things on the outside were public in character. The aviation field, the radio station, the research work by M. I. T., Whaling Enshrined, were for the use of the public, and even his bathing beach became so public that many thousands of people visited it daily. These are not the things with which a man surrounds his home.

On the other hand, the Master elsewhere found that Green's Star Island home was constructed of the best materials and designed for comfort and beauty. That there was nothing about it to suggest anything but an unusually fine private residence. That it was elaborately furnished with specially built furniture manufactured by the company that had made the Round Hills furniture and by decorators in New York City; that the rugs were more beautiful and expensive than those at Round Hills and the general effect more homelike (see page 45 of Report.) Notwithstanding this, the conclusion here excepted to is used as an argument to support the finding that Green's domicil was in Massachusetts. We think

this argument could with more reason be applied against Massachusetts and in favor of Florida.

EXCEPTION XLI.

"This defendant excepts to the conclusion stated on page 54 of the Master's report, as follows:

> 'There is no sufficient evidence to show that Green ever intended to make New York his permanent home,'

because: (a) it appears that this conclusion is predicated in part on a statement or declaration of Green whereas in other parts of his report, the Master finds that Green's declarations being in conflict with his manner of living, are not sufficient on which to determine domicile; (b) the conclusion is also in part founded upon the fact that Green made no effort to become a voter in New York, and that he owned no real estate there except what he acquired as a result of mortgage foreclosures, and paid no personal or income tax in New York."

The support for this exception depends on what evidence is required to prove intent. If Green's intent is to be determined by his declarations of residence in Texas, then perhaps the Master is correct in stating that there is no sufficient evidence to show that Green ever intended to make New York his permanent home. But if his intent is to be judged by his manner of living, then the record is replete with evidence to show that

he intended to make New York his permanent home. Intent to make permanent one's home means present intent, that is to say, a man establishes his home with the present intention of making it permanent, as distinguished from temporary, and with no intent at that time of changing. When Green moved from Texas to New York in 1911, he established himself there in a home just as he had been established in his home in Texas, with his same housekeeper, and employed house servants and used the same household furniture that he had used in Texas while living there. His manner of living in New York indicates the same intention of permanency with which his Texas home was established and maintained, and there is nothing to justify the conclusion that he did not at that time intend to continue making his home in New York. If the conclusion here excepted to is in any way based on Green's failure to become a voter in New York, then the same argument would apply against Massachusetts. The argument that he paid no tax in New York would also apply against Massachusetts. The only home Green had between 1911 and 1921 was in New York, and if the law fixes domicil at a man's home, then Green's domicil during that period was in New York.

EXCEPTION XLII.

"This defendant excepts to the conclusion stated on page 54 of the Master's report as follows:

> 'In a sworn statement to the tax officials of New York, he declared that he was not and never had been a resident of New York,'

because the Master used the said statement made by Green for tax avoidance as a reason for finding that Green never intended to make New York his permanent home while the Master failed to apply like statements made by Green against the claim of Massachusetts as to Green's domicile."

It is true as stated in the Master's report that in a sworn statement to the tax officials of New York, Green declared that he was not and never had been a resident of New York, but it is also true that he stated to the Commissioner of Corporations and Taxation of Massachusetts that he was not and never had been a resident of Massachusetts. Both statements were made for the purpose of defeating the efforts of public tax officials in the discharge of their sworn duty, and the two statements had the desired effect. The statement in both instances were untrue, because in fact he was a resident at the time the respective statements were made in those places. A man is a resident wherever he resides, and he need not even be a citizen of the place of his residence, and it does not follow that his home is where he resides. There can be no doubt as to the purpose of all of the statements so made by Green, and it seems hardly fair to use one against New York and not use the other against Massachusetts.

EXCEPTION XLIII.

"This defendant excepts to the conclusion stated on page 54 of the Master's report as follows:

> 'This domicile actually established in Massachusetts in 1921, notwithstanding the mental reservation of his Texas residence, was not abandoned when he built his Star Island Home,'

because the Master failed to find that whatever domicile Green had prior to the time he built and occupied the Star Island Home, such domicile was abandoned and his Star Island Home became and was his domicile prior to and at the time of his death on June 8, 1936."

The conclusion here excepted to presents a legal question and will be discussed as such later in this brief.

EXCEPTION XLIV.

"This defendant excepts to the conclusion stated on page 55 of the Master's report wherein he concluded the true criterion to be:

> 'The true criterion, therefore, for determining domicile where there are two homes seems to be the order of acquisition, etc.'

because the Master obviously failed to apply the further principle of law as follows:

> 'Where a man has two homes, and is domiciled in the earlier he may by a mere change of attitude toward his latter home come to have a principal home and therefore a domicile there.' "

The conclusion here excepted to presents a legal question and will be discussed as such later in this brief.

EXCEPTION XLV.

"This defendant excepts to the conclusion stated on pages 54 and 55 of the Master's report as follows:

> 'But under the authorities, the adoption of a changed location or a subsidiary or secondary home for the sake of health does not constitute the abandonment of the old and acquisition of a new domicile,'

because the Master assumes as a basis for said conclusion that the establishment by Green of his Star Island Home was subsidiary or secondary to his Round Hills place which presumption and conclusion is contrary to the ultimate fact established by a preponderance of the evidence in the case, and further because the Master assumes as a basis for said conclusion that the establishment of the Star Island Home was primarily for the sake of health, and concludes that a change of domicile cannot be induced by a consideration of health, which conclusion is contrary to the established principle of law."

The conclusion here excepted to presents a legal question and will be discussed as such later in this brief.

EXCEPTION XLVI.

"This defendant excepts to the statement or finding on page 55 of the Master's report, as follows:

> '• • • never voted there, never paid any intangible or income taxes in Florida, and as late as 1935, in a judicial proceeding in Florida, testified that he was a resident of Terrell, Texas,'
>
> because the Master used the facts that Green never voted nor paid any intangible or income taxes in Florida, and the statement that as late as in 1935 in a judicial proceeding in Florida, he testified that he was a resident of Terrell, Texas, as a basis for concluding that Green was not domiciled in Florida at the time of his death, and did not apply the fact that Green never voted in Massachusetts nor paid any income taxes there as a reason for finding that Green was not domiciled in Massachusetts; and further, because Florida did not have at the time of Green's death, and never had had, an income tax law."

It is true, as stated by the Master and which forms the basis of this exception, that Green never voted nor paid any intangible or income taxes in Florida, and as late as 1935 in a judicial proceeding in Florida testified that he was a resident of Terrell, Texas. It is likewise true that he never voted nor paid any intangible or income taxes in Massachusetts, and in 1928 stated that he was not a resident of Massachusetts. His testimony in the judicial proceeding in Florida in 1935 that he was a resident of Terrell, Texas, was as much against Massachusetts as it was against Florida, yet these facts are used by the Master only in his argument against Florida and in support of his finding of domicil in favor of Massachusetts. The extent to which this argument in

the Report of the Master is strained against Florida is seen in th statement that Green paid no income taxes in Florida. There is nothing in the record to show that Florida had an income tax law at any time during Green's residence here. As a matter of fact, Florida did not have during that time and has never had an income tax. We quote from the Constitution of Florida, which prohibits the levy of an income tax on its residents or citizens, which inhibition is found in Article IX, Section 11, of the Constitution of Florida, which was submitted by the Legislature of 1923 and adopted at the General Election in 1924, and has ever since been in effect, as follows:

> "Section 11. No tax upon inheritances or upon the income of residents or citizens of this State shall be levied by the State of Florida, or under its authority, and there shall be exempt from taxation to the head of a family residing in this State, household goods and personal effects to the value of Five Hundred ($500.00) dollars. (Additional section, Senate Joint Resolution 135, Acts 1923; adopted at General Election, 1924.)"

So Green could not have paid an income tax to Florida had he desired to do so. This illustrates to some extent the weakness in the support of the ultimate finding and conclusion as to Green's domicil.

EXCEPTION XLVII.

"This defendant excepts to the Master's report because he failed to find that Green con-

sistently on all occasions declared that he was not a resident, inhabitant, or citizen of the Commonwealth of Massachusetts."

The reasons for this exception are found in our discussion of the last preceding question. Consistency requires that the same rule be applied alike in the consideration of all the facts shown by the record in this case, and if the argument excepted to in the last preceding exception is proper to be considered against Florida, then to be consistent, the Master should have considered and found that Green consistently, when the occasion presented itself, declared that he was not a resident, inhabitant, or citizen of the Commonwealth of Massachusetts.

EXCEPTION XLVIII.

"This defendant excepts to the conclusion stated on page 55 of the Master's report that Green did not attempt to make Florida his own country because the same is in conflict with the ultimate fact established by a preponderance of the evidence."

The statement that Green did not attempt to make Florida his own country is again argument, unsupported by and contrary to the established facts of this case. We have already shown, and the Master found, that he bought property and built and furnished a home here, which was more homelike in general effect than the Round Hills house. He invested money in and was connected with business activities in Florida, and that was not true in Massachusetts. He identified himself with

the community life in its various phases, and contributed rather liberally to many of the community projects, civic, philanthropic, charitable and religious. He selected and joined many of the worthwhile organizations in the community of his Florida home, and continued his membership until the end. He was interested in good government, as shown by his membership in the Committee of One Hundred, and in the Dade County Tax Relief Association. Although he did not vote here, he contributed to a fund to assist in electing one who was thought to be the best available man as Mayor of Miami Beach where his Star Island home was located.

Surely these activities indicate an attempt to make Florida his own country.

EXCEPTION XLIX.

"This defendant excepts to the statement contained on page 55 of the Master's Report as follows:

> 'Star Island was left in charge of a caretaker and was only visited by Mrs. Green to remove some of her personal possessions.'

because: (a) the said statement is not supported by the evidence; (b) the acts of Mrs. Green subsequent to Green's death can not be used to determine Green's domicile at the time of his death."

If the statement that Star Island was left in charge of a caretaker has any probative value in determining domicil, then it is in favor of Florida and should have

been so accepted by the Master, because it shows Green's interest in his Star Island home to the extent of employing caretakers to look after and care for it in his absence. As a matter of fact his Star Island home was in the very best of hands during his absence, and was kept in A-1 condition at all times, and this is indicative of his attachment for the place. But if the statement that it was left in charge of a caretaker is to be used against Florida as the Master did so use it in his consideration of that fact then the same argument would apply against the Round Hills house, for that, too, was left in charge of a caretaker when Green left there at the close of each summer season.

If the statement that Star Island was only visited by Mrs. Green to remove some of her personal belongings relates to a time subsequent to Green's death, then such statement is utterly without support in the record of this case. It is a fact shown by the record that she did, subsequent to his death, remove from the Star Island home some of her personal possessions, but there is nowhere in the record any evidence to the effect that she only visited there for that purpose.

Had it been a fact that Mrs. Green only visited Star Island after his death to remove some of her personal possessions, such fact could have no value in determining Green's domicil prior to and at the time of his death, and should not have been given any consideration by the Master in arriving at his finding and conclusion as to domicil, any more than he should have used as an argument against Massachusetts the fact that Mrs. Green spent only a short time in the Round Hills house after Green's death. Again the weakness of the argument in

support of the ultimate finding and conclusion becomes obvious.

EXCEPTION L.

> "This defendant excepts to the conclusion stated on page 56 of the Master's report, as follows:
>
> > 'Round Hills was not only the earlier home but as the findings of fact show, it was the principal, predominant and permanent home when compared with the Star Island residence.'
>
> because the said conclusion is contrary to the ultimate fact established by a preponderance of the evidence in this case."

It is a fact that the Round Hills residence was established prior to the Star Island residence, but its establishment was subsequent to Green's location in and establishment of his home in New York. And if domicil is to be determined alone on the fact as to which of more than one residence or home was first established, then the decision must be in favor of New York because he maintained a residence in all three places continuously from the time of their respective establishment. We have undertaken to point out in the discussion of these exceptions those incidents in Green's life which we think lead to the unmistakable conclusion that of all Green's residences, the Star Island residence was his principal, predominant and permanent home at the time of his death. It had all the attributes of a real home, to the exclusion of every other consideration, and this statement

cannot apply to any of his residences other than his Florida home. His every habit of life was in favor of the conclusion that he came to regard Florida as his principal home. There was where he got more pleasure and comfort of living in his latter years, and the things that had once interested him in and attracted great crowds to Round Hills now ceased to interest him but on the other hand caused him annoyance. During the last few years of his life in Massachusetts he seldom went out, even to ride, and stated to his nurse as a reason for not going out oftener that the people worried him. He enjoyed having people see his beautiful Star Island gardens, but they were not allowed the freedom of his grounds as was the case at Round Hills, indicating that he had tired of the public character and the picnic crowds that had given the Round Hills place more the appearance of a public resort than a home. In Florida he went out daily and enjoyed the outdoors, and enjoyed stopping and talking with friends and acquaintances. The evidence shows unmistakably that at certain periods of his life he underwent a change in his attitude toward things. The reasons for those changes are immaterial. The material inquiry is as to whether the changes caused him to finally have more attachment for and to regard his Star Island home as his principal home. Domicil may be changed for any reason or for no reason. It is immaterial whether his change of attitude was produced by his age and the condition of his health, or whether he had in the course of natural events, just tired of the crowd and noise of other places, and sought a home on a restricted residential island in Biscayne Bay for the quiet and peace that could be enjoyed, free from those things which had theretofore proven unsatisfying.

If Green had returned to Texas in 1923 instead of coming to Florida, and had there done the same things and lived exactly as he lived in Florida, we believe beyond the shadow of a doubt that the Master would have found that his domicil at death was in Texas, and that such finding would have been sustained in fact and in law. If the same facts would have sustained a finding of domicil in Texas where he had abandoned his domicil long prior to coming to Florida, then the same rule applied to those facts must and does fix his domicil in Florida at death.

EXCEPTION LI.

"This defendant excepts to the statement or conclusion on page 56 of the Master's Report as follows:

> 'Mrs. Green looked forward to the time when she might be left alone and had selected a site and considered plans for a small cottage on the South Dartmouth estate which were never carried out.'

because the circumstance here relied on by the Master is too remote to be entitled to any weight in the determination of Green's domicil."

The statement here excepted to that Mrs. Green looked forward to the time when she might be left alone and had selected a site and had considered plans for a cottage on the South Dartmouth estate is perhaps the weakest of all the argument advanced in the Master's report in support of his finding in favor of Massachu-

setts. It was on September 8, 1919, that Mrs. Green talked about building a cottage on a separate hill at Round Hills (D. 307, R. 6551). Again in the early part of 1920 she had plans made for such a cottage and got an estimate on the cost, but gave it up (D. 308, R. 6581). Green said in 1924 that Mrs. Green would like to have a small house up near Smith Neck Road and use the main house for a museum. (D. 315, R. 6719). But the small house was never built. At one time Green told the witness Berglund that he had given Mrs. Green a lot if she wanted to build a house and have her relatives come and live there (D. 261, R. 5712). But there is no record evidence that any property in or about Round Hills or South Dartmouth was ever deeded to Mrs. Green. All of this talk took place before the Round Hills house was built, and is too remote to be considered in favor of Massachusetts or against Florida.

EXCEPTION LII.

"This defendant excepts to the statement or conclusion on page 57 of the Master's report as follows:

'Both were homes, but Round Hills was the earlier, predominant, and principal home,'

because said conclusion is contrary to the ultimate fact established by a preponderance of the evidence."

The conclusion here excepted to presents a legal question and will be discussed as such later in this brief.

PRINCIPLES OF LAW WHICH SUSTAIN FLORIDA'S EXCEPTIONS TO THE MASTER'S REPORT AND FIX GREEN'S DOMICIL IN FLORIDA AT THE TIME OF HIS DEATH.

Most of our Exceptions present questions of fact and have been discussed in relation to the evidence. In our endeavor to demonstrate the unsoundness of the reasoning by which the Master arrived at his ultimate conclusion, a few of the Exceptions have been reserved for discussion as presenting questions of law.

EXCEPTION XLIII.

> "This defendant excepts to the conclusion stated on page 54 of the Master's report as follows:
>
> > 'This domicile actually established in Massachusetts in 1921, notwithstanding the mental reservation of his Texas residence, was not abandoned when he built his Star Island Home.'
>
> because the Master failed to find that whatever domicile Green had prior to the time he built and occupied the Star Island Home, such domicile was abandoned and his Star Island Home became and was his domicile prior to and at the time of his death on June 8, 1936."

It has been shown that Green sold his home in Texas and disposed of his business interests and moved away in 1911. We have also shown that there is no evidence

in the record to fairly support the proposition that Green ever intended to return to Texas to live, but that on the contrary his every act indicated that he did not intend to return there to live.

In *Kennan "On Residence and Domicile,"* page 197, it is said:

> "Among the more common indicia of intent to abandon a particular place are such facts as that a person has disposed of his property and business interests or removed his family."

In *North Yarmouth v. West Gardiner,* 58 Me. 207, 4 Am. Rep. 279, it was held:

> "It seems plain, that when all the elements which constitute a home have ceased, that home itself would cease also."
>
> "What can be more complete annihilation of home, in the case of an intelligent person, than his departure, leaving nothing behind indicative of a home, without any intention of returning thereto."
>
> "It is difficult to conceive of a man, leaving his home, the place which more nearly concerns his welfare than any other, without any intention as to whether he will or will not return. And in the absence of an intention to return, it is quite difficult to conceive of its being a home to him."

Again *Kennan,* at page 259, states:

> "Perhaps no case has illustrated the difference between the definite and indefinite intention

to return more clearly than United States v. Knight where the following language is used: 'A change of abode with present intent to return to the former abode upon the contemplated happening of an event in the indefinite future, as business dispatched, health restored, employment ended, employer's recall, is not a change of residence or domicile. If, however, a person removes to another place with present intent to abide there indefinitely, and not merely until the contemplated happening of a contingency as aforesaid, he abandons his old residence or domicile in the place to which he removed, notwithstanding he may entertain a vague, floating intent or hope to sometime return to the former place. The distinction and difference are that in legal contemplation the first case is a present intent to return and independent of future determination; whereas, the second case is a mere present expectation or hope to return, and wholly dependent upon future state of mind. The latter, unlike the former, does not rise to the dignity of that 'present intent' which is a vital element of residence or domicile.' "

In re: *Dorrance's Estate*, 309 Pa. 152, 163 Atl. 303, Headnote No. 5:

"Expressions of desire to retain a domicile in one state cannot prevail over the intent to make a new home in another state as manifested by actual removal thereto, and manner of living,"

and that principle is applicable here.

In *Dickinson v. Brookline*, 181 Mass. 195, 196; 63 N. E. 331, in an opinion by Mr. Justice Holmes, the Supreme Judicial Court of Massachusetts said:

> "When you intend the facts to which the law attaches a consequence you must abide the consequence whether you intend it or not."

The record establishes the fact that Green moved from Texas to New York in 1911, after abandoning his home there and removing all of his personal effects, and established a place of residence in New York where he actually resided as he had theretofore resided in Texas, and which for many years was the only home he had. Applying the principle of law just stated by Mr. Justice Holmes, he intended the act of removing from Texas to New York and of there establishing his residence and home, and he must abide the consequence of the law which fixed his domicil where he had his only home. He had no intention of removing from New York at that time, but on the contrary set about to establish himself in the community, became a part thereof, and by his every act showed that he intended New York to be his home.

In *Restatement of the law of Conflict of Laws*, at page 38, it is stated:

> "The intention required for the acquisition of a domicil of choice is an intention to make a home in fact, and not an intention to acquire a domicil."

This legal principle is illustrated as follows:

> "A person sometimes desires to have his domicil in a certain place, in order to get the bene-

> fit of one or more of the legal consequences of having a domicil there, but does not wish to change his home to that place; this desire to have a domicil in a certain place has no effect in fixing his domicil there. So too, the desire to retain an old domicil is not controlling if in fact a new one had been acquired under the rules stated in Sections 14 to 25."

Beale in his treatise on the *Conflict of Laws*, page 149, says:

> "It is not enough that a man desires to acquire or to keep a 'legal residence' or 'legal domicil'; the intention necessary for the acquisition of a domicil is an intention as to the fact, not as to the legal consequence of the fact. A man's home is where he makes it, not where he would like to have it."

Again on page 150:

> "It is clear, therefore, that a man cannot retain or obtain a domicil, apart from his home, either for the purpose of voting or of paying taxes."

Green maintained a place of residence in New York as long as he lived.

The Round Hills house at South Dartmouth, Massachusetts, was completed in 1921, and from that time on until 1935 Green resided a part of each year there. He also established a place of residence in Florida, which he occupied in 1927, and in which he resided a portion

of each year until his death. Green was in the position of having three places of residence, each capable of being a home.

In case of multiple residence, we believe that the emphasis should not be placed on abandonment but rather on the intent to make the new place the permanent or principal home, which, coupled with actual residence, would constitute a change of domicil.

In *Restatement of the Law of Conflict of Laws*, page 25, home is defined:

> "A home is a dwelling place of a person, distinguished from other dwelling places of that person by the intimacy of the relation between the person and the place."

And some of the important factors in determining home are set down as follows:

> "1. Its physical characteristics;
> 2. The time he spends therein;
> 3. The things he does therein;
> 4. The persons and things therein;
> 5. His mental attitude toward the place;
> 6. His intention when absent to return to the place;
> 7. Elements of other dwelling-places of the person concerned."

Keenan at page 199 of his treatise, says:

> "This intention of the parties * * * is to be gathered from their acts, declarations, and from a variety of other circumstances."

And at page 63:

> "* * * there is no one fact or criterion which always and invariably betokens domicile, but the intention of the individual as to his residence must be deduced or inferred from a wide range of acts, circumstances and declarations which the courts have recognized as more or less significant in that connection."

In *Smith v. Croom*, 7 Fla. 81, text 151, an early Florida case involving the question of domicil, it was said:

> "It must readily occur that no compass of language can ever fully comprehend the variety of acts which shall in any given case tend to prove the establishment of a domicil; for these acts will ever be as various as are the occupations of men or the emotions of the mind."

Green resided in his Star Island home from the time it was first occupied in 1927 a portion of each year until he died, and the time spent there progressively increased from year to year; and we think the record clearly establishes the fact that he considered Star Island not only as a permanent home but as his principal home.

The determination of domicil by reference to certain facts is not so much a matter of establishing the facts themselves as it is in weighing the relative significance and importance of those facts as related to each other. For, as is said by Kennan, page 64:

> "It depends not upon proving particular facts, but whether all the facts and circumstances taken together, tending to show that a man has

> his home or domicile in one place, overbalance all the like proofs tending to establish it in another; such an inquiry, therefore, involves a comparison of proofs, and in making that comparison there are some facts which the law deems decisive unless controlled and counteracted by others still more stringent."

Green came to Florida, built a beautiful home which was strictly a private home, and only the best materials were used in its construction. He developed it year by year until it was one of the finest homes in the community, and it was kept in A-1 condition until Green's death.

He was very proud of his home, and had his monogram, crest and coat of arms worked into tile and concrete there.

The furnishings were ultra, and individual designing was reflected in every room, and the landscaping was the finest in the entire area.

The time spent in Florida increased year by year until he grew to spend more time in Florida than in any other place.

Green with Mrs. Green ate, drank, slept, entertained their friends, and generally lived in their home on Star Island, and did those things ordinary citizens having a home would do.

Green became interested in and a part of nearly every phase of the community life, business, social, civic, political, charitable and religious.

He was considered by the community as one of their outstanding citizens and was granted many considera-

tions on that basis. He too considered himself as a citizen.

It has heretofore been shown that self-serving declarations and declarations in conflict with the acts of the party should be given no weight in the determination of domicil; however, spontaneous declarations tending to show the state of mind and therefore the intention of the individual, particularly where they are corroborated by acts and circumstances, should be carefully considered and given grave weight.

Kennan at page 71 et seq., states:

> "In general it may be said that the declarations should relate to acts from which intention can be inferred rather than to the intention itself. For one to make the naked assertion that his domicile is in a certain place is simply to state a legal conclusion. To announce an intention of making one's home in a certain place for an indefinite period is stronger but by no means conclusive evidence. Such a declaration should relate to or be supported by specific acts or circumstances which tend strongly to corroborate the statement."

> "It is generally conceded that declarations which indicate the state of mind of the declarant naturally have a tendency to show intention and are therefore admissible. 'Declarations of a person accompanying a change of his abiding place have always been held competent to explain the change as a part of the res gestae; but declarations in such cases are often admissible on a

broader ground than as a part of the act of removing from one place to another. The intention of the person removing is competent to be proved as an independent fact, and anything which tends to show his intention in making the change may be introduced, if it is free from objection in other particulars. The intention may be inferred from acts and conduct, and conduct which tends to show the intention is competent for that purpose. Declarations which indicate the state of mind of the declarant naturally have a legitimate tendency to show intention.'

"Declarations may always be received in connection with any acts or circumstances from which intention may be readily inferred. This principle has been frequently announced in connection with pauper settlements. Where the statements are supported and illustrated by actual facts, the declarations are held to be admissible."

" 'In many cases the identity of the permanent home is to be fixed by facts and circumstances, as mere expression of intention is not always controlling; but when the expression of intention to select a permanent residence at a designated place harmonizes with the facts and circumstances that serve to illustrate the intention, ... there is not much room for dispute as to the place of residence.'

" 'It has been well settled by a series of cases in this Commonwealth that, as a question of domicile usually involves not only actual residence, but the intention and purpose with which

such residence is accompanied, it is competent to give in evidence declarations of intention accompanying the acts of the person whose domicile is to be proved.' 'Continuous uninterrupted declarations, especially at times not suspicious, accompanied by the fact of residence, the removal of personal property and the exercise of political rights, establish a change of domicile.' "

"It should also be remembered that 'while declarations of deceased persons whose domicile or residence is indeterminate are always competent to disclose their intention, they should always be taken to point to a particular moment. It is for this reason that the last declarations of a deceased person are always higher evidence of last residence than earlier declarations.' "

We have shown innumerable occasions where the decedent referred to Florida as home, and there are many other instances in the record of Green's remarks tending to show his intention, as his conversation with Mr. Cleary in 1930 in regard to which Mr. Cleary testified as follows:

"Well, he spoke glowingly of Florida; he said he had been coming down there a long time and he loved it more and more as he went on; he felt better there and it was God's country and his place in Star Island he was going to make a lot of improvements and stay there more and more each year, and I know from my own knowledge afterwards he did make a lot of improvements the next year." (R. 9478.)

The above conversation took place in 1930.

In 1926 Green had purchased his Star Island property and was building his home there, when he remarked to Judge Norfleet:

> "Well, boys, I am going to make this my home now; you can get in touch with me any time, for this will be my home from now on."

Certainly the acts corroborate and support the truthfulness of his assertion and tend to show the state of Green's mind and his intention to make Star Island his real, true, fixed and permanent home.

In 1928 at Rome [illegible] Mr. Rutter:

> "I will see [illegible] Miami next fall."

This statement is another declaration of his mind and attitude toward the two places. He was physically located at the one, but thought of the other as his home. In 1928 while making extensive alterations and additions at his Star Island home, he told Mr. Brooks that he was building to suit himself and that he intended to live there the rest of his life. This declaration is supported and corroborated by specific acts and circumstances. One Sunday afternoon in 1929, when Green was parked in his automobile on the Venetian Causeway located across the bay from his Star Island home, he remarked:

> "I am just viewing my home over there,"

and he spoke in glowing terms of his home and pointed out the beauty of it.

In 1930 in talking with a citizen of Miami about other citizens who had built their houses and their homes there, he said,

"You know this is my home too . . . as well as yours."

This declaration which finds support in all circumstances, is one of the clearest possible indications of Green's intention with reference to his Florida home. He put himself on exactly the same basis as the other citizens of the community.

The declarations of Green in 1931 or 1932 when he was sitting on the front lawn of his home are proof positive of his earnestness and sincerity,

"Is not that beautiful, that's God's country! What more can a man ask than to live and have a home in a place like this."

The fact that he in later years returned to his home earlier and left later would corroborate the statement that he was always glad to get back home. The declaration in 1934 at his home on Star Island, made to his friend, Tucker:

"I am down here, I have this comfortable home, I have privacy, I can do as I damn please, and this is my home, and I expect to live here the rest of my days,"

is supported by every fact and circumstance in this case. This shows his state of mind and the intention that Star Island was his permanent home.

Thus we have continuous declarations running over a long period of time, written as well as oral (see discussion under Exception XXXI), pointing to particular moments, supported and corroborated by a multitude of

acts and circumstances completely in harmony with the facts and circumstances of the case, serving to illustrate Green's intention to make Star Island his real, true, fixed, and permanent home.

EXCEPTION XLIV.

"This defendant excepts to the conclusion stated on page 55 of the Master's report wherein he concluded the true criterion to be:

> 'The true criterion, therefore, for determining domicile where there are two homes seems to be the order of acquisition, etc,'

because the Master obviously failed to apply the further principle of law as follows:

> 'Where a man has two homes, and is domiciled in the earlier he may by a mere change of attitude toward his latter home come to have a principal home and therefore a domicile there.' "

Obviously the Master was strongly influenced in arriving at the conclusion that Green was domiciled in Massachusetts by the principle of law quoted from Beale, at page 190, that:

> "The true criterion, therefore, for determining the domicil where there are two homes seems to be the determination of the order of acquisition of the two homes."

This is good law as far as it goes, but the Master evidently did not give consideration to another equally

important principle of law announced by *Beale*, on page 191, as follows:

> "Predominant Home.—When a man has two homes, and is domiciled in the earlier, he may by a mere change of attitude toward his later home come to have a principal home and, therefore, a domicil there."

Again on page 192, *Beale* says:

> "This change of feeling by which what was formerly one of two equal homes becomes a predominant home may be exhibited in various ways: * * * The commonest way of showing the change of feeling described is by taking part in the local affairs of the chosen home to a greater extent than before, for instance by voting or holding office there."

Green did not vote or hold office in Florida, just as he did not in Massachusetts, but he was interested in good government as shown by the fact that he contributed to a campaign fund raised by the public-spirited citizens of Miami Beach to be used in electing Mr. Snedigar as Mayor of Miami Beach. That manifestation of interest in public affairs was more than he ever exhibited at South Dartmouth, or any other place in Massachusetts. He was engaged in business in Miami and not Massachusetts. He owned stock in the principal banks of Miami, and showed his interest in the local banking interests by lending one of the banks three-quarters of a million dollars on one occasion. He continued to show his interest in the community life of Miami Beach and greater Miami by his membership in various organiza-

tions and his contributions to the various community activities, which continued up to the time of his death; whereas his interest and membership in local organizations in Massachusetts had terminated several years prior to his death.

The Master overlooked these important facts in applying only the criterion as to which of the homes was first acquired. If it is a sound principle of law that domicil may be changed by a change of attitude toward one of two places, and if such change of attitude may be shown by a man's manner of living, then the things that Green did at Miami Beach and Miami in the latter years of his life should be given due weight in determining where his domicil was when he died. This important principle of law the Master obviously overlooked.

EXCEPTION XLV.

"This defendant excepts to the conclusion stated on pages 54 and 55 of the Master's report as follows:

> 'But under the authorities, the adoption of a changed location or a subsidiary or secondary home for the sake of health does not constitute the abandonment of the old and acquisition of a new domicile,'

because the Master assumes as a basis for said conclusion that the establishment by Green of his Star Island Home was subsidiary or secondary to his Round Hills place which presumption and conclusion is contrary to the ultimate fact established by a preponderance of the evi-

dence in the case, and further because the Master assumes as a basis for said conclusion that the establishment of the Star Island Home was primarily for the sake of health, and concludes that a change of domicile can not be induced by a consideration of health, which conclusion is contrary to the established principle of law."

Domicil may be changed, and the motive, whether for business, health, climate, pleasure or otherwise, is immaterial except as it indicates intention.

Kennan, page 322:

"Every person who is sui juris has the inalienable right to change his domicile, even though the motives which prompt him to make the change are questionable."

In re: Balch's Est. (1916) 93 Misc. 419, 156 N. Y. S. 1006, affd. without opinion in (1917) 175 App. Div. 933, 161 N. Y. S. 1117; *Estate of Brady* (1918) 177 Cal. 537, 171 Pac. 303; *Frame v. Thormann* (1899) 102 Wis. 653, 79 N. W. 39, affirmed in (1900) 176 U. S. 350, 44 L. ed. 500, 20 S. Ct. 446.

Beale, page 132:

"A person who is a normal adult may change his domicil and thereby acquire what is known as a domicil of choice."

In re: *Paullin's Estate*, 109 Atl. 13:

"In case of divided residence, I think it may be properly said that it is the existence of an

> actual residence at a particular place, accompanied by a present actual intention of making it a permanent home or a home for a time indefinite, that establishes a domicil, and that the motives that actuate the apparent intent are immaterial, except in so far as the motives may aid in determining whether the apparent intent was actual or merely pretended."

In re: Newcomb's Estate (1908), 192 N. Y. 238; 84 N. E. 950, text 954:

> "Motives are immaterial, except as they indicate intention. A change of domicil may be made through caprice, whim, or fancy, for business, health, or pleasure, to secure a change of climate, or a change of laws, or for any reason whatever, provided there is an absolute and fixed intention to abandon one and acquire another, and the acts of the person affected confirm the intention." (McConnell v. Kelley, 138 Mass. 372.)

Beale in his Treatise on the *Conflict of Laws*, page 144, discusses the case of *Hegeman v. Fox*, 31 Barb. 475 (N. Y. 1860), in which he says:

> "In Hegeman v. Fox, the question was whether the testator was at the time of his death domiciled in Florida. He was a native of Massachusetts, had been domiciled in New York City, afterward in Williamsburgh, New York, and then removed to Florida. There was no evidence of any intention to retain his domicil in Williamsburgh, and the opinion of the Court was that the weight of the evidence established

that he neither expected nor intended to return to the northern States. He purchased a plantation in Florida, stocked it, and furnished his house, went to housekeeping, entered into the business of planting, and made other family arrangements looking to a permanent residence there. Upon these facts it was held that the circumstance that this change of residence was induced by considerations of climate and health, and that domestic trouble intervening induced the expression of an intention to return to New York, did not overcome the effect of his acts, which clearly indicated an intention to make his permanent home in Florida."

In the *Hegeman-Fox case*, as in the instant case, the change of domicil to Florida was induced by considerations of climate and health, and the principles upon which that case was decided have an important bearing on the determination of Green's domicil on June 8, 1936.

In *Restatement of the Law of Conflict of Laws*, page 43, it is stated:

"The motive with which a person acquires a new dwelling-place does not determine the question of the establishment of a domicil of choice, but it may be important evidence tending to show whether or not, when a new dwelling-place is acquired, there is an intention to make a home there."

EXCEPTION L.

"This defendant excepts to the conclusion stated on page 56 of the Master's report, as follows:

> 'Round Hills was not only the earlier home but as the findings of fact show, it was the principal, predominant and permanent home when compared with the Star Island residence,'
>
> because the said conclusion is contrary to the ultimate fact established by a preponderance of the evidence in this case."

If a person has several places of residence and two or more are regarded by him as home and each has indications of being a home, that which is the principal home will be the domicil.

In *Restatement of the Law of Conflict of Laws*, p. 48, it is said:

> "When a person who has capacity to acquire a domicil of choice has more than one home, his domicil is in the earlier home, unless he regards the second home as his principal home.
>
> "Comment:
>
> a. If a man has two dwelling places, any one of the following situations may arise:
>
> 1. One may be a home in the sense used in this Restatement, and the other merely a residence.
>
> 2. Both may be homes in the sense used in this Restatement, but the second one may become his principal home. This may be because his civic and domestic interests attach themselves more and more to it rather than to the

other or for other reasons. In this case the principal home is the domicil."

Beale, pp. 191 and 192, says:

"When a man has two homes, and is domiciled in the earlier, he may by a mere change of attitude toward his later home come to have a principal home and therefore a domicil there.

"This change of feeling by which what was formerly one of two equal homes becomes a predominant home may be exhibited in various ways: By a change in the manner of life, as from life adapted to the city to that of a country gentleman; by establishing the family principally in one place rather than another; or in any other way of showing a distinct preference for the life of one home."

It has been conclusively shown that Green considered Star Island as his home. If Round Hills ever became the home of Green, there was such a decline of interest in Massachusetts and such an attachment of his civic and domestic interests to Star Island rather than Round Hills, that Star Island became his real, true, fixed and permanent home, and certainly his principal home.

The Master correctly found that the Star Island home was the *more homelike*. He states on page 54 of his Report:

"He went to Florida on the advice of his physician in 1924 and after living in hotels and on house boats, purchased three lots and built a beautiful home which he luxuriously furnished with everything necessary for his comfort. In

> Florida, he was able to be out daily in the sunshine and to avoid the chill of Northern winters and obtained relief from the arthritic condition which was sapping his vitality. Doubtless those who have visited both Round Hills and Star Island would prefer to live at the latter place, where there is every convenience, almost perpetual sunshine and a homelike atmosphere."

To be consistent, we can only interpret the Master's finding to mean that Green had a distinct preference for his Star Island home.

This preference is most important in determining principal home. His acts and declarations are entirely consistent, and certainly there can be no doubt that he did have a distinct preference for his Star Island home.

To further illustrate the fact that Star Island was the principal home of Green at the time of his death, we would apply the test heretofore outlined as factors considered in determining home.

1. Physical Characteristics.

The magnificent home of Green on Star Island designed for beauty and comfort and solely as a private residence for himself and family. It was the only home or place of residence that was his to do with entirely as he pleased.

He had no home in Texas, only an apartment rented from month to month in New York, and just a half interest in the Round Hills place, which, as contrasted with Star Island, was built for a public institution, and the grounds of which were open to the public and overrun with sightseers.

2. The Time He Spent Therein.

He spent more time in Florida in the latter years of his life than in any other place and the time spent there steadily increased. Florida was the only place after 1923 where Green ever stayed six months, and he spent his last three Christmases there.

3. The Things He Did Therein.

Green's interest steadily increased in Florida while it decreased in Massachusetts. He took much more interest in the community life of Florida than in any other place and did more *living* in his home there.

4. The Persons and Things Therein.

At Star Island Green had everything indicative of a real home; at Round Hills he was surrounded by every evidence of a museum and a memorial park.

5. His Mental Attitude Toward the Place.

Green had been sent to Chicago, Texas, and New York by his mother to look after her interests, and it was at his Mother's request that he went to Massachusetts. He came to Florida in behalf of his own interest. He came seeking health; he felt that it agreed with him and he came again. His interest grew and he bought property and built a residence. Gradually but surely, his attitude toward the place changed until it became "home" to him with all that the word means and implies. It was into this home, about it, and through it, that he sought to "express himself."

He gradually transferred his domestic, civic and general interests more to this place than any other, and as

his interest increased in Florida it decreased in both Massachusetts and New York.

Both his acts and declarations showed a distinct preference for his Star Island home.

When Green first came to Florida in 1923, he was a man 55 years of age. After having lived amidst the rush of the city in an apartment in New York and in the middle of a "public park" in Massachusetts, he unquestionably longed for a home where he could find comfort, peace and happiness, which had been denied him elsewhere. He found these in the quiet and serene dignity of his Star Island home where he had privacy and could do as he pleased.

6. His Intention When Absent to Return.

When Green left Florida "he went away on his vacation"; when he returned "he came home from a vacation." He intended to live the rest of his life and wind up his days in his home on Star Island, and it was from this home in 1936 that he was *sent* away to die.

7. Elements of Other Dwellings.

Round Hills was planned, designed and built to be a public institution—a part of the memorial to his mother and ancestors. The estate was open to the public and was visited by thousands of people, sometimes as many as twenty thousand in one day. Green said he was going to turn it over to the public and had laid it out with that in mind, but that he didn't see how it could be any more public than it was then. It was not characteristic of a home.

On the contrary, the Star Island home was his own private, individual home, built on his own land, with his

own funds, and he wanted it kept private and sacred. Consider, too, his declarations of love and affection, his interests and activities in the community, his eagerness to get back home and his plan to live there the rest of his days. It is inevitable that Star Island be determined his real, true, fixed and permanent home, and surely his principal home at the time of his death.

The Master concluded under the heading "Applicable Principles of Law" at page 49 of his report:

> "Where, as here, declarations and conduct are in conflict, declarations alone do not afford any safe guide in determining the issue, especially where they have been inspired by selfish motives."

And cited:

In re: Trowbridge's Estate, 266 N. Y. 283; 194 N. E. 756.

In re: Newcomb's Estate, 192 N. Y. 250; 84 N. E. 950.

He commented on page 50 of his report:

> "These two cases bear many points of resemblance to the case at bar and deserve careful consideration."

This defendant quoted at considerable length from the Trowbridge case in its request for findings (p. 97, et seq.) illustrating the resemblance between the two cases and also the resemblance between the claim of Florida in the present case and the claim of Connecticut in the Trowbridge case.

In that case Trowbridge sought to have his domicil in New York, had a house there that was boarded up, kept an office there which he visited daily, registered, voted, made his tax returns from there and otherwise invariably declared that New York was his legal residence and domicil, and certainly intended it to be.

However, he made his home in Noroton, Connecticut. He erected a home there in 1924 at a cost of half a million dollars. By this structure he sought to express himself. He embellished it with the family crest and coat of arms. He took a personal pride in having his family circle about him in the house he had built. He was interested in his flowers, his garden and his trees. He took pleasure in running his home and was distinctly a home man.

In re: Trowbridge's Estate, supra:

> "* * * If at a given time a man exclusively makes his home with his family in a complete domestic establishment, intending so to occupy it for the rest of his days, the place of that habitation is then his domicile, no matter what he may say to the contrary."

Certainly we cannot conceive of a case that bears a more striking resemblance, even to the details, than the Trowbridge case does to the case at bar. If you substituted the name Green for Trowbridge and Florida for Connecticut in showing what he did to make the place his home, the discrepancy could hardly be noted.

EXCEPTION LII.

"This defendant excepts to the statement or conclusion on page 57 of the Master's report as follows:

> 'Both were homes, but Round Hills was the earlier, predominant, and principal home,'

because said conclusion is contrary to the ultimate fact established by a preponderance of the evidence."

The Supreme Court of Mississippi said in the case of *McHenry v. State*, 119 Miss. 289, 80 So. 763, 766:

> "It is conceded that a man may have more than one place of residence, and under the experiences and environment of present-day methods and society, one frequently abides in more than one place in the course of a year. Traveling men and other agents are sent from their homes over a broad commercial field. Many are called upon to leave their permanent abode by the exigencies of business, the search of pleasure, and education. It is frequently said that a man can have but one domicile or legal residence and it is there where he assumes burdens and exercises the privileges of citizenship. This does not mean the claimant may establish a home at one place and merely claim to live at another. His claims must certainly be in good faith and laid upon a firm foundation. The married man must indeed have a 'home, sweet home' around which ultimately cluster all the beautiful sentiments of home."

And in the same case:

> "Our court in the Hairston Case quotes with approval from Judge Story, Confl. of Laws, page 45, Sec. 47: 'That even where a party has two residences at different seasons of the year,' 'that will be esteemed his domicile which he himself selects, or describes or deems to be his home, or which appears to be the center of his affairs, or where he votes or exercises the rights and duties of a citizen.'"

Hairston v. Hairston, 27 Miss. 704, 61 Am. Dec. 530.

The Supreme Court of Florida in the case of *Smith v. Croom*, supra, (1857), in a discussion of the various authorities, cited with approval *Phillmores Law of Domicil*, page 18, as follows:

> "Domicil answers very much to the common meaning of our word home, and where a person possesses two residences, the phrase 'he made the latter his home,' would point out that to be his domicil."

And our court comments:

> "We like this conception of the word home . . . it is the word whose essential meaning comes up fully to our idea of domicil. It is a word which admits not of qualification. To speak of a permanent home is to perpetrate a tautology —to speak of a temporary home is to involve a contradiction of terms. It is a word which finds its true interpretation in the instincts of our nature. It is a word the full meaning of which

is of universal appreciation; it is understood alike by the degraded savage and the classic Greek—by the Republican serf and the refined Roman. Wherever that spot is found there the law fixes the domicil of succession, it matters not whether that be upon the wasted hills of the 'North States' or on the virgin plains of the 'land of flowers.' The determination of that locality is the subject of evidence, and that evidence must establish two points—first an actual residence, and secondly the deliberate intention to make it his home, in the acceptation in which it is used in the foregoing citation."

EXCEPTION LIII.

"This defendant excepts to the ultimate finding and conclusion on page 57 of the Master's Report, as follows:

> 'Upon a careful consideration of all the evidence in the case and the memoranda submitted by counsel for the respective parties, I find that the domicile of Edward Howland Robinson Green at the time of his death June 8, 1936, in fact and in law, was in the Commonwealth of Massachusetts,'

for the following reasons:

(a) The said finding and conclusion is not supported by a preponderance of the evidence in the case.

(b) The preponderance of the evidence under applicable provisions of law support only the

conclusion that the domicile of Edward Howland Robinson Green at the time of his death June 8, 1936, was in the State of Florida.

Therefore, this defendant requests that the said ultimate finding and conclusion be amended, so as to read as follows:

> 'Upon a careful consideration of all the evidence in the case under applicable provisions of law, it is found that the domicile of Edward Howland Robinson Green at the time of his death June 8, 1936, in fact and in law was in the State of Florida.' "

In discussing the preceding Exceptions to the Master's Report, we have endeavored to point out the record facts which, under the applicable principles of law, demonstrate inevitably that Green's Star Island home in Florida was at the time of his death his principal home, and therefore his domicil.

We have pointed out the outstanding characteristics of his Florida home in comparison with the Round Hills estate, and the rented apartment maintained as a residence in New York. We have shown that his Star Island home was the only residence which he owned exclusively, and that it was the only place designed and constructed as a home to the exclusion of other purposes. We have made no comparison of his Florida home with the home he formerly owned in Texas, because in our view of the case he had definitely abandoned his Texas home long prior to his death, and had not for many years maintained even a residence in Texas, and there is nothing in the record to indicate that he had any intention of ever re-establishing a home there.

We have shown that the time he spent in Florida increased year by year, while it decreased both in New York and Massachusetts.

We have shown that his activities in Florida indicate a greater attachment for and interest in his Star Island home and in the community in which it was located, than any other place where he maintained a residence during the last ten years of his life.

The only logical conclusion to be drawn from these considerations is that when Green died on June 8, 1936, his domicil in fact and in law was in the State of Florida, and we respectfully request and urge that the Court so find and decree, the Master's ultimate finding and conclusion to the contrary notwithstanding.

Respectfully submitted,

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FILE COPY

JAN 16 1939

IN THE

Supreme Court of the United States

October Term, 1938.

No. 7, ORIGINAL.

THE STATE OF TEXAS,

Complainant,

against

THE STATE OF FLORIDA, THE COMMONWEALTH OF MASSACHUSETTS, THE STATE OF NEW YORK, MABEL HARLOW GREEN and HETTY SYLVIA ANN HOWLAND GREEN WILKS,

Respondents.

BRIEF FOR RESPONDENT, THE STATE OF NEW YORK, IN SUPPORT OF ITS EXCEPTIONS TO THE REPORT OF THE SPECIAL MASTER.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1938.

No. 11, ORIGINAL.

THE STATE OF TEXAS,
Complainant,
against
THE STATE OF FLORIDA, THE COMMONWEALTH OF MASSACHUSETTS, THE STATE OF NEW YORK, MABEL HARLOW GREEN and HETTY SYLVIA ANN HOWLAND GREEN WILKS,
Respondents.

BRIEF FOR RESPONDENT, THE STATE OF NEW YORK, IN SUPPORT OF ITS EXCEPTIONS TO THE REPORT OF THE SPECIAL MASTER.

Jurisdiction of the Court.

The Respondent, The State of New York, has not excepted to any of the jurisdictional facts found by the Special Master at pages 10 to 15 of his Report. In its answer, prayer is made that this Court deter-

mine and adjudge whether Edward H. R. Green, deceased, was domiciled at the time of his death in the State of Florida, or in the State of Texas, or in the Commonwealth of Massachusetts, or in the State of New York.

If this Court has jurisdiction, it is conferred by Section 2 of Article III of the Constitution of the United States.

The State of New York opposed the filing of the Bill of Complaint herein and is still of the opinion that this Court is without jurisdiction, as it is convinced that no controversy among States exists. Assuming that this Court would have jurisdiction, in the event all four States assessed and levied taxes upon the estate on a domiciliary basis and the aggregate of such taxes, together with the taxes imposed by the United States, exceeded the value of the net estate, the fact still remains that this condition does not, as yet, exist, and it is unlikely that it ever would, for it would require a determination by the appropriate authorities of each of the States that Green was domiciled therein at the time of his death. As yet, no one of the States has assessed and levied any death tax against the estate, and, if the matter were left to the ordinary procedure for the assessment of such taxes in the various States, it is highly improbable that determinations would be made in all of the States that Green was domiciled therein. In New York State, the only administrative official who has authority to determine whether or not the estate tax is assessable on the theory that Green was a resident of the State is the Surrogate of one of the counties and thus far no Surrogate has acted in this respect.

It is extremely doubtful if this case will be of any considerable value as a precedent, owing to the fact that the situation it presents is unique and the expense involved in a proceeding such as this is tremendous. Furthermore there is little to commend the litigious method of determining tax liability. Far better results will be obtained for both the States and the estate if the normal processes of tax assessment are adhered to.

For the Courts of the United States to step in and undertake to determine State tax questions through litigation before the ordinary procedure of the States has been resorted to would seem to constitute an unwarranted invasion of the rights of the States quite beyond the limitations upon the exercise of federal power set forth in the Constitution of the United States.

Statement.

From the standpoint of the Respondent, The State of New York, the only questions presented by this case are:

(a) Whether Green ever became domiciled in the State of New York, and, if so,

(b) Whether he ever lost such domicile.

Such references to the Report of the Special Master, the Digest of the Evidence, and the Official Transcript of the Record as are deemed necessary and appropriate are made in the course of the argument

under the several points herein or in the Bill of Exceptions to the Report of the Special Master.

The Report of the Special Master.

The Respondent, the State of New York, has filed herein its Exceptions to the Report of the Special Master, which are seventy-seven in number. It is intended to urge each error assigned, but, as the majority of the exceptions relate to evidential matters and the Bill of Exceptions contains citations to those portions of the Report of the Special Master, the Digest and the Official Transcript which are deemed to support them, argument with respect to the exceptions is, in many instances, unnecessary.

Aside from the exceptions, the criticism to be made of the Report of the Special Master is that it is written more from the standpoint of the Advocate than from that of the Judge, a fault which is not uncommon when a person's experience has been in the field of practice of the law and not in judicial office. Without going into detail, it may be pointed out that the Report includes findings of many evidentiary facts, at the same time omitting other evidentiary facts deemed of importance to this Respondent, that it uses certain facts to establish that the domicile of the decedent was not in the State of New York or the State of Florida, but fails to make like use of similar facts with respect to the Commonwealth of Massachusetts, and that the findings are arranged in such manner and the Report so worded as to improperly color it in favor of the Respondent, The Commonwealth of Massachusetts, and against the other Respondents and the Com-

plainant. The determination is not warranted by the evidence and contrary to the controlling principles of law applicable to this case.

The Digest of the Evidence.

On the whole, the Digest of the Evidence is a fair abbreviation of the Official Transcript of the Record, but contains many inaccuracies and important omissions. The digester should not essay the role of editor, and, even though it may be his conception that certain testimony or other evidence is unimportant, it should not be eliminated. Particular instances in which the Respondent, The State of New York, feels that reference should be made to the Official Transcript of the Record have been pointed out in its Bill of Exceptions or will be indicated in this brief, but attention is called to the fact that in many instances the Digest omits important portions of the evidence, *e. g.*, the treatment of N. Y. Ex. 95, which appears at pages 4393-4 of the Official Transcript. The Digest states with respect to this exhibit (p. 178):

> "N. Y. Ex. No. 95, letter from Green dated January 24, 1913, to Dr. E. P. Wilmot, Austin, Texas, explaining the pressure of business in New York prevented him from attending the Governor's Inaugural Ceremonies (4393)."

The reason this exhibit was offered by New York was that it contained the following statement:

> "As I have moved to New York and located so far away from Austin it will be impossible for me to attend this meeting."

All reference to this quotation from the letter, which is deemed very important by New York, was omitted from the Digest.

Another example is found at page 204 of the Digest, where the entry is:

> "Ex. No. 38, excerpts from the Minute Books of the Murray Company, of Dallas, Texas, pertaining to the original appointment of Green as a Director and his election in subsequent years, covering the period from October 20, 1909 to February 18, 1936 (4908-28), indicating in the Minutes of the meeting January 13, 1931, that E. R. H. Green and Walter P. Allen were residents of Terrell, Texas; no designation of residence being given in subsequent years."

The reference in the Digest fails to show facts set forth in the exhibit deemed of material importance to New York, viz., that in January, 1910, and January, 1911, Green was shown to have resided in Dallas, Texas, but in January, 1912, and January, 1913, he was shown to be a resident of the City of New York, which indicates what those responsible for the records of the Company understood to be his residence in those years. The fact that in subsequent years he was shown to be a resident of Terrell, Texas, is easily accounted for. He had then established his theoretical domicile in Terrell and was embracing every opportunity to build up evidence to support it.

New York feels that the only way in which all the evidence in the case may be obtained in its true perspective is by consulting the Official Transcript. Time available to Counsel has not been sufficient to permit a studied comparison of the Digest with the Transcript for the purpose of noting inaccuracies and omissions, but the foregoing are illustrative of the reason why it is believed that the Digest in many instances does not present a fair resume of the evidence.

POINT I.

Green abandoned his domicile in Texas in 1911 and became domiciled in New York.

Green was in New York City with his parents at the time he attained young manhood. He attended Fordham University for a while and was then sent by his mother to Chicago to acquire some business experience in looking after her investments there. In the year 1892, after his return from Chicago to New York City, his mother sent him to Terrell, Texas, to look after her investment in the Texas Midland Railroad, which Railroad she had acquired as the result of a mortgage foreclosure. His life in Texas is fairly stated in the Report of the Special Master at pages 23 to 27. He first lived at Terrell, but after a few years there moved to Dallas, where he occupied rented quarters until in 1907 or 1908, he purchased a substantial residential building there, which he had remodeled and elaborately decorated to suit his taste, and into which he then moved. This house was well furnished and equipped and was a home in every respect. He lived in it until the early part of 1911, when his mother indicated her desire that he should return to New York City to assist her with her business affairs. Before leaving Texas, he disposed of most of his business interests there and gave up the office of General Manager of the Railroad, although he retained the presidency. Until 1911, he had been assessed for personal property in Dallas as a resident, but was not so assessed thereafter.

In July, 1911, he gave up his residence in Dallas and shipped his automobiles and household furniture to New York City.

The Special Master states at page 51 of his report:

> "The undisputed facts clearly show, as this admission of counsel indicates, that after 1911 Green *no longer had a place of residence in Texas.* The domicile of choice which he established in Texas in 1892 and maintained until 1911 was abandoned in fact and his domestic establishment and all of his personal belongings removed to New York." (The italics are from the Report.)

The Record is pregnant with evidence to support the statement quoted above. It is beyond dispute that when Green left Texas in 1911 he not only had no place of residence there but definitely abandoned his domicile of choice there. His domestic establishment and personal belongings were all removed to New York City and Miss Harlow, who had been his housekeeper in Texas, came to New York to occupy a similar capacity there.

Upon his arrival in New York City, Green set up his domestic establishment and installed his household furniture and personal belongings in a four story, one family, brownstone front residence located on West Ninetieth Street, just around the corner from Central Park, West. This residence belonged to the estate of his grandfather and was under the control of his mother. It was serviced by an adequate number of domestics and had all the indicia of a home, being comparable in every respect with the home which he had abandoned in Dallas. He lived in the West Ninetieth Street house until 1918, when he moved to the Waldorf-Astoria Hotel, which was then the most sumptuously appointed hotel in New York City. There

he occupied a large suite of rooms, which he retained continuously until the hotel was torn down in 1929.

In July, 1917, while living in the West Ninetieth Street house, he was married to Miss Harlow and she went to live with him at the Waldorf-Astoria as his wife. Shortly after moving into the Waldorf, the Greens took Mrs. Mary Stafford, a friend of their Texas days, into their family circle and she continued to live there with them until 1927.

From the time he came to New York to live until he was physically disabled in 1921, Green led the normal life of a New York City business man, attending to his business affairs and patronizing the baseball games and theatres.

He maintained an office for the transaction of his business affairs.

He kept two or more luxurious automobiles, manned by chauffeurs and ready for service whenever needed.

He became a director in some of the leading banking institutions, maintained his bank accounts and safe deposit vaults in said City and kept his securities there.

He became affiliated with many clubs and societies, social, scientific, business and recreational in their natures.

When he left the City on business trips, or for other reasons, he always returned.

The foregoing is but a brief outline of Green's activities in New York City from 1911 to 1921. His life there was lived in exactly the same manner as he had lived in Texas.

In spite of the aforesaid facts and his definite finding that Green abandoned his domicile of choice in Texas in 1911, the Special Master indulges in the wholly unwarranted presumption that he intended to return to Texas (R. 51), and failed to find that he ever became domiciled in New York.

Matter of Trowbridge, 266 N. Y. 283, is ample authority for the proposition that Green became domiciled in New York.

New York in its Exceptions, numbered 2, 3, 4 and 5, has duly presented to this Court the failure of the Special Master to find the facts in relation to Green's whereabouts during the period above referred to, his failure to find that before moving to New York City from Texas in 1911 Green disposed of practically all of his business interests in Texas, his failure to find that when Green left Texas in 1911 and moved to New York City he intended to and did leave Texas permanently, and his failure to find that Green became domiciled in the State of New York after he moved to said State from Texas in the year 1911.

The fact that Green rented a room in Terrell, Texas, at about the time he came to New York, with the purpose of establishing a voting residence there, does not militate against his acquisition of a New York domicile. The room was palpably a pretext. He never

entered it and kept nothing there, except a few pieces of discarded clothing.

Although the Special Master in his Report erroneously states that Green relinquished the room above referred to after his mother's death in 1916 and his marriage in 1917, the fact is that he relinquished the room in 1914, two years before his mother's death and three years before his marriage. This is covered by New York's Exception No. 59.

Green's attempt to preserve his domicile or legal residence in Texas by the renting of a room in Terrell was clearly abortive.

Matter of Steer, 3 H. & N. 594.
Archer v. Civil Service Commission, 1 C. 2d 357, 26 Pac. 2d 41.

The fact that Green voted in Terrell, Texas, until the year 1920 did not have the effect of continuing his Texas domicile.

In the *Trowbridge* case, 266 N. Y. 283, *supra*, it appeared that with two exceptions Trowbridge had registered and voted in New York State from 1921 until he died in 1931, but notwithstanding this he was found to have been domiciled in Connecticut. Indeed, the case for a New York domicile for Trowbridge was stronger than the case for a Texas domicile for Green, because Trowbridge not only voted in New York but he also owned a house there in which he had formerly lived, which had not been rented and could have been made available as a residence for him if he chose to live there.

See also:

People ex rel. James v. Surrogate's Court, 36 Hun, 218.

The statements contained in certain affidavits made by Green for the purpose of "swearing off" an assessment for personal property made against him by the assessors of the City of New York in the year 1916 do not form a sufficient basis upon which to predicate the continuance of a Texas domicile. These affidavits were self serving. They contained obviously false statements, as is pointed out in New York's Exception No. 13, wherein exception is taken to the Report of the Special Master for failure to make a finding with respect to such false statements. Mr. Lawson Purdy, who was then President of the Board of Taxes and Assessments of the City of New York, testified that at the time in question the whole assessment procedure in New York City with respect to personal property was asinine. It was common knowledge that taxes on personal property could be evaded, as such taxes did not find sanction in the eyes of the public. A convenient method employed to avoid such taxes was to set up a claim of non-residence in cases where there was even the slightest basis for so doing.

It should be observed that Green made statements to the taxing authorities of Massachusetts and Florida similar to those made to the New York City taxing authorities. If his statement that his legal residence was in Texas was sufficient to preclude a domicile in New York, it certainly would be sufficient to preclude a domicile in either Massachusetts or Florida.

As a matter of fact, the declarations made by Green in the affidavits submitted to the New York City taxing authorities are unimportant from a domiciliary standpoint. This appears to be conclusively established by a multiplicity of decisions.

In *Matter of Trowbridge*, 266 N. Y. 283, *supra*, Trowbridge filed a verified statement with the Connecticut taxing authorities in which he stated that he was a non-resident of that State, a declaration that he never withdrew. He went even further and requested the New York City tax authorities to transfer his name to the resident tax roll, as the result of which he was assessed as a resident of said city from 1924 to 1930, inclusive. These facts were deemed insufficient to sustain a New York domicile.

A correct statement of the principle of law which controls with respect to the maintenance by Green of the pretense of a domicile in Texas is contained in *Turner v. Turner*, 87 Vt. 65, where the Court say (p. 66):

> "It is plain under our decisions that the court below was right, for *intention* alone cannot retain a residence, every vestige of which is gone, with no place left to which the party has a right to return."

In the same case, it was said (p. 67):

> "In *Barton v. Irasburg*, 33 Vt. 159, it is said that in considering the question of *intention* it is always important to consider whether the party has anything to return to. If he has, he may well be supposed to have an intention to return. But if he has not, he may more reasonably be thought to carry his home with him."

In *Barton v. Irasburg*, 33 Vt. 159, cited in the last quotation, it was said (p. 162):

> "Again, in considering the question of intention, it is always important to consider whether the party has anything to return to.
>
> "A householder who has a family and a house to return to, a single person who has an accustomed home, or personal effects and worldly goods to go back to, may well be supposed to have the intention of returning. Hence in many cases the place where one keeps his effects, his chest, etc., is said to be his home. If he take his all with him and leaves no home behind him, then he may be thought more reasonably to carry his home with him."

In *Jamaica v. Townshend*, 19 Vt. 267, the court say (p. 270):

> "Residence is a *fact*. Here the fact and the manner of dwelling is conceded; and the court charged the jury, that, in such a case, the intention to build a house and remove into it in the town of Jamaica did not constitute a residence in Jamaica. Is there any case, where such an *intention* will constitute a *residence?* I think not. When one leaves home, or leaves a former residence, the intention to return, the *animus revertendi*, will often prolong the virtual or legal residence, or domicil, when the actual *commorancy* may be, most of the time, in another place. Such are those occasional absences, which always occur in visits of business, or pleasure, when one's family attends him. Nor is it important, whether, during these temporary absences, the family board, or keep house, or whether the absence be for a few weeks, or many months, or years, even—as occurs in the case of foreign ministers, and members of Congress, sometimes.
>
> "But in all these cases there is always some *place*, which the party does, or may justly, call *home*, some local habitation, which has a tangible, palpable existence, out of the mind of the party.

I do not say this is *always* indispensable; but there must be something more than a mental purpose of return at some indefinite, future time."

The evidence fails to establish even a floating intention on Green's part to return to Texas, but if it had been proved that such an intention existed, it would not have been sufficient to keep the Texas domicile alive.

The quotation in the Report of the Special Master, at pages 52-3, from *Gilbert v. David*, 235 U. S. 561, contains a clear statement of the law of floating intention. That case standing alone is ample authority for the propositions that Green lost his Texas domicile when he moved to New York City, and that he acquired a new domicile in the latter place.

In *Wright v. Schneider*, 32 Fed. 705, it was said (p. 706):

"For the two years preceding the filing of the bill of complaint, complainant does not appear to have maintained a residence elsewhere than in the state of Missouri.

"In opposition to the facts above recited, we have the statement of the complainant that in point of fact it was not his purpose to give up his residence in New Jersey, that his residence in this state was merely temporary, and that he has always intended to return to New Jersey when his business enterprises in this State were concluded.

"From the foregoing statement it is obvious that all of the complainant's visible acts for two years or more were indicative of an intention on his part to take up his abode in this state for a period of years. It also appears that his actual residence is in this state. These facts must prevail over any secret purpose which he may have entertained to return at some indefinite future time to New Jersey and make that state his home."

If a ten year period be substituted for the two year period set forth in the foregoing quotation, the word New York for Missouri, and the word Texas for New Jersey, the statement would come close to reflecting the situation in the case at bar.

In *Ringgold v. Barley*, 5 Md. 186, it was said (p.193):

> "When once removed to his new domicil, however, the party's purpose to remain need not be fixed and unalterable. If it becomes a place of *fixed present domicil* it will be sufficient to fix a residence, and although there may be a *floating intention to return to his former place of abode at some future period*, still these circumstances will not defeat the newly acquired residence or the rights and obligations which attach to it."

In the proceeding in the Surrogate's Court of Essex County, State of New York, for the probate of Green's will, counsel for the Respondent, Wilks, filed an elaborate brief, forty pages of which were devoted to establishing that Green became domiciled in New York City after he left Texas. In this proceeding, the same counsel have not committed themselves in this respect.

New York unreservedly adopts the following argument from the brief of counsel for Respondent, Wilks, in the aforesaid probate proceeding:

> "The essential element of a man's domicile is that it is where his home is. Beale explains that the meaning of the word 'home' as used in this definition is expressed in various ways, but the clearest statement seems to be:
>
> 'the place in which a person has a fixed habitation without any present intention of moving therefrom.' (I Beale's Conflict of Laws, p. 147.)

"Clearly enough, Colonel Green had such a home as this in New York in 1917 and had no such home as this in Texas in 1917. From the latter part of 1911 he had lived continuously in the house in West 90th Street, where he had a complete establishment and to which he had moved his furniture when in 1911 he closed and sold the only house he had in Texas.

"His general habit of life centered in New York City. He ate and slept and passed a large part of his leisure time in his home in 90th Street. He attended regularly at the office which he and his mother, Mrs. Hetty Green, maintained for the transaction of their business affairs. He went to the theatre frequently and during the season was a regular attendant at the baseball games at the Polo Grounds. He was a member of several New York clubs and organizations. He was a director throughout this period of two banks in New York City and for part of the time of a safe deposit company also. He regularly attended frequent meetings—in some instances weekly meetings—of the Boards and Executive Committees of these institutions. At his 90th Street house he had his stamp collection, which was one of his principal recreational interests and he purchased the stamps for it from local stamp dealers. When he moved into the 90th Street house Miss Harlow, who had theretofore lived with him in Texas, promptly moved there also and made it her home. During approximately six years between the establishment by Colonel Green of his home in the West 90th Street house and his marriage in June, 1917, he was absent from New York City for all purposes not more than an aggregate of 13 months. There is no basis in the testimony for an inference that at any time between 1910 and 1917, Colonel Green intended to move away from New York. His written declarations are to the effect that he intended to remain there indefinitely.

"During no part of this period did Colonel Green have any other habitation, dwelling place or place of abode, except the pretense of one in

the Jarvis house in Terrell, where until November, 1914, he had kept a suit of clothes and had paid a rental of $5 a month and to which he never went. This fictitious and never occupied—indeed, never intended to be occupied—room in Terrell, a town where he had not lived since 1895, was obviously and only temporarily an attempt to have some place which might afford some semblance of reality to a claim of 'legal residence' in Texas. Such visits as he made to Texas between 1911 and 1917 were either for the purpose of inspecting the Texas Midland Railroad which, throughout the period, he and his mother were trying to sell, or for the purpose of voting. While in Texas on these visits he slept either in the private car of the Railroad in Terrell or in transient rooms at the Adolphus Hotel in Dallas.

"Conclusive upon our case is the statement of the Court of Appeals in *Matter of Trowbridge*, where the Court was answering the question of what there was to diminish the force of facts which tended to show that Mr. Trowbridge had his home and domicile in Connecticut:

'Chiefly the declarations made to tax authorities and the periodic voting pilgrimages to the city of New York. These—and again the supporting evidence is undisputed—were all parts of an attempt to vindicate an opinion that a man may retain an abandoned home as a technical domicile in law after he has elsewhere established another abode in which he expects to live indefinitely. Doubtless that intention was entertained in good faith and from motives that are beyond criticism, but it is nonetheless irrelevant.' (266 N. Y. at p. 292.)"

New York regards the question of Green's having become domiciled within its borders as being of supreme importance. If he became domiciled in New York, under well established legal principles he never lost that domicile, and was so domiciled at the time of

his death. This will be more fully developed later on in this brief.

The true situation with respect to the acquisition by Green of a domicile in New York is stated at pages 16 and 17 of the Exceptions and Objections of the State of Texas to the Findings and Report of the Special Master, where it is said:

> "* * * substantially the same indicia which the Master employed to reach the conclusion that Green, at his death, had established permanent homes in both Massachusetts and Florida, apply with equal force to his New York residences. There is no more reason for rejecting the claims of New York, in this relation, than those of Florida and Massachusetts."

If Green did not become domiciled in New York, it is certain that he never became domiciled in any other state than that which was his domicile of origin, and there has never been even the slightest suggestion that his domicile of origin in Vermont persisted throughout his life.

It is settled that a person must have a domicile somewhere. The rule is well stated by Chief Justice Shaw in *Matter of Abington v. North Bridgewater*, 23 Pick. 170, at page 177, as follows:

> "In coming to the inquiry in each case, two considerations must be kept steadily in view, and these are:
>
> 1. That every person must have a domicil somewhere; and
>
> 2. That a man can have only one domicil, for one purpose, at one and the same time."

If, as the Special Master found, Green abandoned his domicile in Texas in 1911 and did not acquire a

domicile in Massachusetts until 1921, he must have been domiciled somewhere during the intervening period of ten years. There can be no other conclusion than that he was domiciled in New York.

In referring to the *Trowbridge* case, counsel for the Respondent, Wilks, in the probate court brief aforesaid, commented:

> "The *Trowbridge* case is the most recent one in point in the Court of Appeals on the question of domicile. It states the law which determines the domicile of Colonel Green in June and July of 1917. Whatever declarations Colonel Green may have made after he left Texas in 1911, concerning the 'legal residence' which he wished to establish in that state, the undisputed fact is that he actually lived exclusively in the house at 5 West 90th Street for over five years before the execution of the antenuptial agreement and his marriage. During all that period of time he actually had no place of residence anywhere within the State of Texas."

As before stated, the opinion of this Court in *Gilbert v. David*, 235 U. S. 561, *supra*, clearly supports New York's argument that Green became domiciled in New York. The facts of the cited cases are closely analgous to the facts of the case at bar, insofar as they have bearing upon a change of domicile from Texas to New York. Mr. Justice Day, writing for this Court, said (pp. 569-70):

> "In this case it clearly appears that for some years prior to 1890 the plaintiff lived in Menominee, in the State of Michigan. He had there a home, and exercised the ordinary duties and privileges of citizenship. In February, 1890, his uncle died in Connecticut, and the plaintiff immediately went to Danbury, in that State, where he re-

mained practically all the time until his death in 1911.

"The question is, Had he lost his domicile in Michigan and acquired one in Connecticut, so that he was at the beginning of the suit in 1904 in reality a citizen of the last-mentioned State?

"This matter of domicile has been often before this court, and was last under consideration in the case of *Williamson v. Osenton*, 232 U. S. 619, *supra*. In that case the definition of domicile, as defined by Mr. Dicey, in his book on 'Conflict of Laws', 2d ed., 111, is cited with approval. There change of domicile is said to arise where there is a change of abode and 'the absence of any present intention to not reside permanently or indefinitely in the new abode.' Or, as Judge Story puts it in his work on 'Conflict of Laws,' 7th Ed., §46, page 41, 'If a person has actually removed to another place, with an intention of remaining there for an indefinite time, and as a place of fixed present domicile, it is to be deemed his place of domicile, notwithstanding he may entertain a floating intention to return at some future period.' 'The requisite animus is the present intention of permanent or indefinite residence in a given place or country, or, negatively expressed, the absence of any present intention of not residing there permanently or indefinitely.' *Price v. Price*, 156 Pa. St. 617, 626.

"Applying these definitions to the conduct of plaintiff, we have no doubt that the court was right in holding that he had acquired a new domicile in the State of Connecticut. He removed there with his family, and occupied a house to which he held the title. He owned other real estate in Connecticut, inherited from his uncle. He took a letter from his church in Michigan to a church in Danbury, Connecticut. For about ten years he was not back in Michigan, except for a short time, and then for a temporary purpose. The Michigan homestead and much of the furniture used there were sold upon the removal to Connecticut. For more than ten years he resided continuously with

his family in the same house in Danbury, Connecticut. While the plaintiff did not vote in Connecticut, as far as the record shows, it is in evidence that he declared to another his intention of becoming a voter there. To some witnesses he declared his purpose to reside in Connecticut. As against this testimony, it appears that he left his desk with his brother-in-law in Michigan, which he declared was for the purpose of 'holding his residence there.' To some witnesses he declared his intention to live in Michigan and expressed his preference for that State as a dwelling-place. He continued to pay membership dues to orders to which he belonged in Michigan.

"It is apparent from all the testimony that the plaintiff may have had, and probably did have, some floating intention of returning to Michigan after the determination of certain litigation and the disposition of his property in Connecticut should he succeed in disposing of it for what he considered it worth. But as we have seen, a floating intention, of that kind was not enough to prevent the new place, under the circumstances shown, from becoming his domicile. It was his place of abode which he had no present intention of changing, that is the essence of domicile."

The inference to be gathered from the statement at page 51 of the Report of the Special Master, that Green was temporarily residing in New York for the purpose of conducting his own and his mother's business, would seem to be that Green did not acquire a domicile in New York because of the fact that he came to New York City to look after his mother's business affairs. From the time he was nineteen years of age Green was engaged in looking after his mother's business, first at Chicago, later in Texas, and then in New York. This is covered by Exception No. 1. He started from New York and went to Chicago in connection with his moth-

er's business interests. He returned to New York and then went to Texas on the same mission, and then again returned to New York for a like purpose. If the fact that he was in Texas on his mother's business did not preclude him from becoming domiciled there, and New York agrees with the Special Master that it did not, it is difficult to see how the fact that he came to New York in connection with his mother's business affairs can operate to shut out a New York domicile.

New York excepts to the statement on page 51 of the Special Master's Report, which reads as follows:

> "After his mother's death in 1916, his marriage in 1917 and he had come into the full enjoyment of his fortune and was free from restraint, Green might have returned to Texas and re-established himself in an actual permanent home there. Instead of doing so, he relinquished his nominal abode which he had obtained by renting a room in the house of Mrs. Jarvis in Terrell, which he never occupied, and in the visits he made to Texas in subsequent years to attend the meetings of his Railroad Directors, to vote, or for the purpose of taking medical treatment, he stopped at hotels or at the Buie Sanitarium at Marlin."

As heretofore pointed out, the room in Texas was given up in 1914. What Green might have done after his mother's death and his marriage is purely speculative and can have no possible bearing on the issue. For the Special Master to indulge in conjecture on so important a matter is highly prejudicial to the Respondent, The State of New York. The things that Green might have done are illimitable. We are only concerned with what he did. The evidence shows that after 1917 he continued to make his home in New York

City, just as he had done since 1911. (See Exception No. 59.)

The Respondent, The State of New York, contends and respectfully urges upon this Court that the law and the facts of this case establish beyond peradventure of doubt that Green became domiciled in New York City after he abandoned his domicile in Texas and moved to said city.

POINT II.

The presumption is that the domicile established by Green in New York City continued and the burden of proving that it was changed rests upon the respondents, the Commonwealth of Massachusetts and the State of Florida.

There are no principles of the law of domicile more firmly seated than that a domicile once acquired is presumed to continue, and that the burden of proof to show a change of domicile is upon those who allege it.

In *Desmare v. United States*, 93 U. S. 605, this Court stated the rule in the following language (p. 610):

> "A domicil once existing continues until another is acquired. A person cannot be without a legal domicil somewhere. Where a change of domicil is alleged, the burden of proof rests upon the party making the allegation."

In *Mitchell v. United States*, 21 Wall. 350, this Court said (p. 353):

> "A domicile once acquired is presumed to continue until it is shown to have been changed. Somerville v. Somerville, 5 Vesey, 787; Harvard Coll. v. Gore, 5 Pickering, 370; Wharton's Conflict of Laws, §55. Where a change of domicile is alleged the burden of proving it rests upon the person making the allegation. Crookenden v. Fuller, 1 Swabey & Tristam, 441; Hodgson v. DeBuchesne, 12 Moore's, Privy Council, 288 (1858). * * * These principles are axiomatic in the law upon the subject."

In *Matter of Newcomb*, 192 N. Y. 238, a leading case on domicile it is said (p. 250):

> "The existing domicile, whether of origin or selection, continues until a new one is acquired and the burden of proof rests upon the party who alleges a change."

In *Kenman on Residence and Domicile*, at pages 220-2, the author states:

> "One of the few principles upon which all the authorities seem to be in harmony is that, whenever a change of domicile is alleged the burden of proof rests upon the party asserting the change. * * * As stated in the English case of De Bonneval v. De Bonneval 'the presumption of law being that the domicile of origin subsists until a change of domicile is proved, the onus of proving the change is on the party alleging it and the onus is not discharged by merely proving residence in another place, which is not inconsistent with an intention to return to the original domicile.'"

Numerous cases in many jurisdictions are cited in support of the above text.

In *Reed's Will*, 48 Ore. 500, it was said (p. 505):

> "We are not so much concerned at this time with the correct technical definition of domicile as we are with the law regulating a change of domi-

cile when once acquired. It is shown by the evidence and admitted by the contestants that Mr. and Mrs. Reed were domiciled in Oregon from 1854 to 1892—a period of nearly 40 years—and this domicile is presumed to have continued until it is shown that a new one was established in intent and in fact, by indicating and carrying into effect an intention to abandon the Oregon domicile, and to establish another in California. Every person is assumed by the law to have one domicile and one only. And when this is shown to exist, it is presumed to continue until not only another residence and place of abode are acquired, but until there is an intention manifested and carried into execution of abandoning the original domicile and acquiring another by actual residence; and the burden of proof is upon the party who asserts the change."

In *Succession of Simmons*, 109 La. 1095, it was said (p. 1097):

"The party who seeks to avail himself of a change of domicile bears the burden of proving it. So long as any reasonable doubt remains, the presumption is that it has not been changed."

Lord Brougham in *Munro v. Munro*, 7 C. & F. 842, said (p. 891):

"* * * and I apprehend it is the rule universally that, where a domicile has been constituted, the proof of the change of domicile is thrown upon the party who disputes it, and that you must show distinctly that there has been the *animus* as well as the *factum*; that there has been a desire and intention to change the domicile, as well as the fact of leaving that place of residence, in order to alter the former domicile and to acquire a new one."

In the opinion *In re Dorrance*, 115 N. J. Eq., 268, it was said (p. 277):

"The law is thoroughly well settled and unquestioned everywhere that a man's domicile once acquired, remains until a new domicile is acquired, and that a new domicile is not acquired by moving to another residence unless he has the intention to make his home permanently in the new residence." Several authorities are cited.

See also:

Bruner v. Bunting, 15 Va. Law Reg. 514;
Dunn v. Trefry, 260 Fed. 147;
First National Bank v. Hinton, 123 La. 1018;
Caldwell v. Pollak, 91 Ala. 353;
Matter of Seymour, 107 Misc. 330;
Matter of Kane, 93 Misc. 406;
Isham v. Gibbons, 1 Bradf. 69;
Ausbacher & Co. v. DeNevue, 45 La. Ann. 988;
Walker v. Walker, 1 Mo. App. 404;
Petition of Oganesoff, 20 F. (2d) 978.

POINT III.

Green's New York domicile was never changed and he was domiciled in that State at the time of his death.

In order to ascertain the true situation with respect to Green's domicile at the time of his death, it is necessary to consult the evidence in its entirety, and all of the facts developed at the trial should be considered together. New York has sought to avoid a multitude of requests to find with respect to evidentiary matters of relative unimportance but which go to make up the composite picture. Nevertheless, it is felt that consideration should be given to each and every fact dis-

closed by the evidence, whether or not included in the Digest or the Findings, and particularly the facts set forth in the Suggested Findings of Fact submitted by the Respondent, The State of New York, to the Special Master.

In his Report, the Special Master has undertaken to divide Green's life into several parts or domiciliary periods and to apply rules of law to each period so determined upon. This is erroneous and tends toward improper conclusions. It is no more possible to divide Green's life into several parts for the purpose of determining domicile than it is to wrest a particular clause in the opinion of a court from the context and say it represents the law of the case.

There was never an instant from the time Green came to New York in 1911 until he died when he did not have a home in New York City which was fully equipped and ready for his occupancy at any time, day or night. At first we find him in the West Ninetieth Street house for a period of seven years, from 1911 to 1918; then, he moves to the Waldorf-Astoria Hotel where he remains for about eleven years; and finally, when the Waldorf-Astoria is torn down, he moves to the Sherry-Netherland Hotel and maintains his home there until the time of his death. This constitutes an unbroken chain of residences in New York City from 1911 to 1936, a period representing a quarter of a century and approximately one-half of his adult life.

The various residences occupied by Green in New York City were homes in a true sense. Many, many thousands of the residents of New York City make

their homes in hotel apartments, and the facts that Green changed his home from the West Ninetieth Street house to the Waldorf-Astoria and later to the Sherry-Netherland in no way militate against his New York domicile. It is unnecessary to speculate as to the reasons which impelled Green to make his home in hotels. The transfer to the Waldorf-Astoria occurred only a brief time after his marriage, and it may be that Mrs. Green's changed status and social ambitions influenced the decision, or that Green desired to be located nearer to his office at 111 Broadway. His office had been next door to his residence on Ninetieth Street, but after his mother died he moved it downtown. The increased expense involved in living in a hotel apartment was justified by the fact that he had come into the income of his share of his mother's estate.

Green's apartment at the Sherry-Netherland, one of the most exclusive apartment hotels in New York City, was a suite which occupied the entire twenty-fourth floor and had a large open terrace overlooking Central Park. The character and dignity of this apartment is somewhat belittled (unintentionally, of course), by the statement at page 33 of the Report of the Special Master that the Greens had no dining room at the Sherry-Netherland and Green ate at his desk or on a card table. The Record is clear that the apartment did have a dining room and there is no proof whatsoever showing that Green ate at his desk or on a card table. (See Exception No. 64.)

In *Matter of Rutherford*, 88 Misc. 414, it was said (p. 417):

"By custom of this country hotels in this city [New York] are very often the 'homes' of a large number of people who for various reasons prefer living in such public places to the burdensome occupation of private dwellings or apartments. Such preference does not deprive a person of the right to regard the hotel at which he is living as his 'home,' nor does it prevent him from acquiring a domicile here. Such a person is not a sojourner at the hotel; he lives there colloquially."

The statement above quoted seems to dispose of the assertion by the Special Master at page 33 of his Report that Green's apartments in the Waldorf-Astoria and Sherry-Netherland Hotels were used as temporary sojourning places. Green was not a sojourner at these hotels. He lived there (See Exception No. 65).

There is ample precedent to the effect that a person may acquire a domicile in a hotel.

Emery v. Emery, 218 Mass. 227, is authority for the proposition that a person may have his domicile in a hotel although he owns a substantial summer home elsewhere. Indeed, in that case the summer home had long been the domicile before the hotel domicile was acquired.

In *Matter of Martin*, 173 App. Div. 1, revsg. 94 Misc. 81, it was held that the decedent had his domicile in the Plaza Hotel in New York City, despite the fact that the hotel rooms were not occupied or paid for on a permanent basis, but were only occupied and paid for on occasions when the decedent was in the city.

In *McCord v. Rosene*, 39 Wash. 1, it was said (p. 2):

"The only fact which discriminates this case from the great number of cases deciding this point

is that the residence of this respondent was at a hotel, viz., the Butler Hotel, in the city of Seattle. But this fact, we think, cannot make any difference with the question of residence. In modern times many men establish and maintain their residences in hotels, for great periods of years, both with and without their families, and whether a man lives in a hotel or at a private dwelling, either owned by him or rented for the purpose of residence, can make no possible difference."

In *Brafman v. Brafman*, 144 Md. 413, the decedent was held to have been domiciled in Baltimore, Maryland, although during the time he was there he lived at a small hotel or with relatives.

In *Estate of Austin*, Myrick's Probate Reports [1872-9] 237, the decedent lived in a hotel in San Francisco, California, but had a summer home in San Mateo, California, which latter he used for purposes of pleasure and recreation. He spoke of both places as his home. It was held that his domicile was in San Francisco.

At pages 16-17 of his Report, the Special Master makes reference to Green's Sherry-Netherland apartment as a "non-housekeeping apartment in the Sherry-Netherland Hotel in New York City." A similar reference appears at page 33 of the Report. The language employed by the Special Master is not well calculated to convey a correct impression as to the nature of Green's apartment. Great numbers of New Yorkers live in so-called non-housekeeping apartments, but this does not mean that the apartment is not suited for a home. The evidence discloses that about sixty per

cent of the guests at the Sherry-Netherland Hotel were on a permanent basis. They occupied apartments similar to Green's, although few, if any, were as elaborate. Green's Sherry-Netherland apartment was supplied with food from the hotel kitchen, and there were no laundry facilities connected with it, but there were ample facilities for the serving of meals supplied from the hotel kitchen and the linen and other necessary service were also supplied by the hotel. The description of the apartment by the Special Master is highly inaccurate, if it is taken to indicate that the apartment was not a place suited for the permanent residence of Green and his family.

The fact that Green maintained a private unlisted telephone service in his apartments at the Waldorf-Astoria and Sherry-Netherland Hotels during all the time that he lived in them, which was in addition to the regular hotel telephone service, indicates the permanent character of his occupancy. Such service is characteristic of the homes of wealthy New York residents (See Exceptions Nos. 9 and 10).

During the entire period of his residence in New York City (with the exception of the last three years of his life, to which reference will be made elsewhere) Green continued to maintain at least two chauffeured automobiles always ready for his use. These automobiles were registered in New York. The only available applications for registration of the same set forth that Green was a resident of New York City. Exception has been taken to the failure of the Special Master to find that the automobiles kept by Green in New York City were kept on "live" storage on a year round

basis, ready for service at any time, day or night, and were used frequently (See Exception No. 11).

Green had the sole occupancy of the apartments at the Waldorf-Astoria and Sherry-Netherland Hotels. The rent at the Waldorf-Astoria ranged from $11,491.-20 to $21,422.00 per year. The rent at the Sherry-Netherland was originally $27,000.00 per year, but was reduced to $20,250.00 after the depression had caused a shrinkage in rental values. The first year that Green lived at the Waldorf-Astoria he was on a yearly basis, but thereafter the basis of his occupancy was monthly. The first two years at the Sherry-Netherland were on a yearly basis, after which his occupancy there was monthly.

From 1911 until his death, Green's principal bank accounts were kept in New York City, his safe deposit vaults were there, his securities were kept there, he had his only office there, and all of his business affairs were managed there. Only subsidiary bank accounts were maintained at New Bedford, Massachusetts, and at Miami Beach, Florida, for his convenience during the time that he spent at his summer and winter residences, respectively.

In determining domicile consideration must be given to where a person has his principal bank accounts, where he has his safe deposit vaults and keeps his securities, and where he has his office and transacts his business affairs. The fact that subsidiary bank accounts are kept at the places where a person has temporary homes, such as summer and winter residences, is evidence that such places are not the domicile.

Mitchell v. United States, 21 Wall. 350, *supra*;
Chambers v. Hathaway, 187 Cal. 104;
Reed's Will, 48 Ore. 500, *supra*;
Huntly v. Gaskell, 1906 A. C. 56;
Matter of Lydig, 191 App. Div. 117;
Doeme v. Doeme, 96 App. Div. 284;
In re. Dorrance, 115 N. J. Eq. 268, *supra*;
Matter of Wolf, 144 Misc. 256;
Matter of Frick, 116 Misc. 488.

Matter of Wolf refers both to the keeping of securities in a safe deposit box and the maintenance of a principal bank account. In the opinion, Surrogate Foley said (p. 258):

> "It is significant also as bearing upon her intention that almost all of the decedent's personal property, of the value of approximately $72,000, consisting mostly of securities, was continuously located to the date of her death in Oil City, Penn."

In *Chambers v. Hathaway* it was held that the place where a person had his business headquarters, kept his safe deposit boxes in which were stored his stocks and bonds and other valuable papers, did his principal banking and made his investments, and in which he also had a permanent place of abode, was his domicile, despite the fact that he lived elsewhere during the greater portion of each year and had a bank account at the place where he spent most of his time to cover his expenses there and had a safe deposit box there where he kept such papers as he desired to have with him while he was away from his main place of business.

The other cases cited support the statements contained in the text.

When Green first came to New York City in 1911 he opened an office for the transaction of his business affairs and those of his mother. This office was continuously in existence until he died and all of his business was managed in New York. In 1914, Wilbur K. Potter was employed by Green and his mother as an office assistant, and later became Green's confidential business manager in charge of the New York office, which position he continued to hold as long as Green lived. Mrs. Wilks' business affairs were also managed at Green's New York office.

When Green first came to New York he divided his time between his office and the Seaboard National Bank, where he transacted some of his financial business. After his incapacity in 1921, Green was unable to make personal visits to his office or to the bank, but he maintained daily contact with the office and held frequent conferences at his respective New York City homes with Potter.

Certain corporations were formed to facilitate the transaction of the financial business of the Green family. The Windham Realization Company, Inc., was organized as a vehicle to be used in the foreclosure of mortgages, and the Westminster Company was organized as a kind of a holding company. Both of these corporations came into existence prior to Hetty Green's death. After her death and because of the provision in her will that her estate should be held in trust for a period of ten years, Green Estate, Incorporated, was formed to take over the assets of her estate. None of these corporations did any business

for the public. Their affairs were concentrated in Green's business office in New York City.

Green's business consisted principally in the investment of his and his family's fortune, including the purchase of bonds and other securities and the making of call loans. Every check that Green ever drew came back to his New York City office. When he was absent from New York City his investment business was carried on through correspondence and by telephone, the same as if he were present, and all books relating to the business affairs of Green and his sister were kept in the New York City office, where there was a staff of several employees. He received at least one letter from his office every business day.

There is no basis whatsoever for the finding of the Special Master, at page 21 of his Report, that aside from Green's railroad activities in Texas between 1892 and 1911 he was never in any active business or devoted to the making of money. Green was active in the floral business in Texas and had various other business activities there in addition to the Texas Midland Railroad. He was active in business in New York and gave the same his personal attention until he was physically incapacitated, after which his business affairs were conducted through his office in New York City. He was devoted to the making of money throughout his life. (See Exception No. 58.)

A fact of particular significance in connection with the finding of the Special Master that Green became domiciled in Massachusetts in 1921 is that all of his personal correspondence files were kept at his office in

New York City until he opened the Star Island house in Florida in 1927, after which the files were taken from place to place with him as he traveled, duplicate steel cabinets being provided at Round Hills and Star Island in which he kept his correspondence during his sojourns at those places. The failure of the Special Master to make a finding of these facts is covered by Exception No. 16. If Massachusetts became Green's domicile in 1921, it would have been only natural that he should have kept his personal correspondence files there. His failure to do so confirms New York's contention that Round Hills was merely a place of temporary abode.

One theory upon which death taxes are justified is that they constitute a payment for services rendered and protection afforded during lifetime in building up and maintaining a person's fortune. Substantially the only services rendered by government to Green during his lifetime with respect to his securities and cash, which constituted by far the greater part of his fortune, were those rendered by the State of New York and its municipality. For this reason, the facts that Green's business was transacted in New York, his bank accounts kept there, and his securities kept there gives New York a moral as well as a legal claim to death tax upon the intangibles of his estate. No other state supplied governmental services with respect to his intangibles. In Massachusetts and Florida his holdings were largely real property upon which the regular real property taxes were paid.

Nearly all of Colonel Green's business letters were addressed to him at New York City, which he always

gave as his permanent address. This is an element favoring New York to be considered in determining his domicile.

Dunn v. Trefry, 260 Fed. 147, *supra*.

In *Mitchell v. United States*, 21 Wall. 350, *supra*, elements referred to by this Court as those usually relied upon to establish intent to have a domicile were a house of residence, payment of personal taxes, exercise of political rights, and declarations. Applying these tests to the case at bar it is found that New York is the only State in which Green had both a house of residence and a place of business. The evidence is sufficient to establish a Texas domicile if Green had a home there in fact, but the intent to have a residence in that State, standing alone, is insufficient, for which reason declarations favoring Texas and voting there cannot be given weight. He did not pay personal taxes anywhere. These three elements are not available to any other State. As among New York, Massachusetts and Florida, the latter two had only a house of residence, whereas New York had both a house of residence and the sole place of business which, combined with the fact that Green's only house of residence was in New York from 1911 to 1921, not only establishes his domicile in New York but constitutes proof of its continuance until his death.

Green belonged to numerous social, recreational, business and scientific clubs and associations in New York City, his membership therein continuing throughout his life. He joined a few similar organizations at New Bedford, Massachusetts, but discontinued his membership therein several years previous to his

death. He also joined certain like organizations in Florida in which he never relinquished his membership. His interest in organizations of this character to which he had belonged while in Texas ceased when he left that state in 1911.

In determining a person's domicile the place where he belongs to organizations such as referred to in the preceding paragraph is entitled to weight.

Matter of Lydig, 191 App. Div. 117, *supra*;
Matter of Frick, 116 Misc. 488, *supra*.

Exception has been taken to the failure of the Special Master to find that Green gave up his memberships in Massachusetts social organizations long prior to his death, but maintained his memberships in New York social organizations as long as he lived (See Exception No. 39). This fact is important. If Massachusetts had been the domicile, Green would not have retained his connection with organizations in New York in preference to those in Massachusetts.

Exception has also been taken to that part of the Special Master's Report on page 20 wherein he finds that Green joined clubs, societies and social organizations in every community where he dwelt, but never attended them (See Exception No. 47). The Special Master overlooked the important fact that Green did attend the Union Club, one of the leading men's social organizations in the City of New York.

Green's interest in baseball and the theatre has already been referred to. He had a private box at the Polo Grounds on an annual basis. The lease of this was not surrendered until the spring of 1927 (D. 157).

In anticipation of his moving to New York City and as a preliminary thereto, Green was elected a director of the Seaboard National Bank on July 7, 1910, that being one of the principal banks in New York City at the time. This connection continued as long as he lived. The Seaboard National Bank became the Seaboard Bank, the latter was merged into the Equitable Trust Company, and the Equitable Trust Company was merged into The Chase National Bank, which, at the time of Green's death and for some years prior thereto, was and now is one of the world's largest banking institutions. Green was a director of the Chase National Bank when he died, having previously served as director of the Seaboard Bank and the Equitable Trust Company. He was a director of the Columbia Trust Company of New York City from 1912 until 1920, when he declined reelection. He became a trustee of the New York Produce Exchange Safe Deposit and Storage Company in May, 1914, and continued as such throughout his life. His only other bank directorships had been in Texas banks during his early days in that state.

Green's directorships in New York institutions are strong evidence that New York City was his domicile all his life. Had he intended to change his domicile to Massachusetts or Florida he would doubtless have given up these business affiliations.

In the ordinary course of events, a person selects his personal counsel and his personal and family physician at the place where his domicile is. Green was no exception. His personal attorney was Charles W.

Pierson, head of the New York City law firm of Alexander and Green, and his personal and family physician was Dr. Harry S. Pascal of New York City. Exception has been taken to the failure of the Special Master to find that Mr. Pierson was Green's general personal and business attorney and that Dr. Pascal was his personal and family physician (See Exception No. 8).

In re Dorrance, 115 N. J. Eq. 268, *supra*, at page 280, the Court stressed the fact that Dr. Dorrance's "personal counsel and legal adviser continued to be Judge Lippincott whose offices were in Camden and whose home was near" Dorrance's.

Significant on the question of Green's domicile is the fact that his secretary, Walter H. Marshall, made his home in New York City from the time he came there from Texas with Green in 1911 until the time of Green's death. Exception has been taken to the failure of the Special Master to make such finding (See Exception No. 6). Marshall's family lived with him in New York.

Mrs. Wilks, Green's sister and only near relative, was and is domiciled in New York City. She, too, has a pretentious summer home near the water at Greenwich, Connecticut. There would be as much reason for the contention that Mrs. Wilks is domiciled at Greenwich as there is for the contention that Green was domiciled at his summer home at Round Hills.

On numerous occasions when Green was living in the Waldorf-Astoria and Sherry-Netherland hotels in New

York City, he referred to them respectively as his home. Exception has been taken to the failure of the Special Master to so find (See Exception No. 14).

It may be pointed out in this connection that there is a marked difference between Green's declarations that Texas was his "legal residence" and his statements that New York was his home. The former were clearly self-serving and made for the purpose of deception as to the place where his domicile really was. The Special Master has correctly found that declarations of this character are entitled to no weight.

In *Matter of Trowbridge*, 266 N. Y. 283, *supra*, it was held that the fact that Trowbridge described himself in all his writings and instruments as a resident of the State of New York did not make him a resident thereof, despite the fact that he acted upon the advice of counsel.

See also:

Estate of Harkness, 176 Cal. 537.

The rule is concisely stated by Kennan in his work on *Residence and Domicile*, at page 90, when he says:

> "Declarations which tend to establish a domicile which is advantageous to the declarant are viewed with suspicion and if admitted at all are accorded but little weight. Such declarations occur most frequently in cases relating to suffrage and taxation."

Spontaneous declarations, as distinguished from those of a self-serving nature, are entitled to great weight. When Green was on guard he always stated

that his legal residence was in Texas, but in his unguarded moments he gave expression to his true thoughts and called New York his home.

In *Ross v. Ellison or Ross*, 141 L. T. Rep. 666, it was said (p. 668):

> "Declarations as to intention are rightly regarded in determining the question of a change of domicile, but they must be examined by considering the person to whom, the purposes for which, and the circumstances in which they are made, and they must further be fortified and carried into effect by conduct and action consistent with the declared expression."

In *Jacobs on Domicil*, Section 455, in speaking of declarations, it is said:

> "The time, occasion, and manner of making them, their reasonableness and consistency with themselves and with the other proven facts in the case, the presence or absence of the suspicion of sinister purpose in making them, * * * enter materially into the estimation of their value."

The fact that Green made certain declarations in which he referred both to Massachusetts and Florida as his home has not been overlooked. No better explanation of these declarations could be found than the explanation he himself made when he talked with the witness Strandell of the Railway Express Agency at Miami in 1934. Strandell asked him when he was going back home and Green replied, laughingly, "What do you mean by going back home; I am home." Strandell then said, "What time of the year are you going back," and Green replied, "I am going back home; I am going back when the weather gets too

warm; the reason I laughed was because your agent up in Massachusetts asked me the same identical question last year, last Fall; he asked me, Colonel, when are you going home—back home and I told him the same thing I am going to tell you—I told him whenever your weather gets so that I cannot stand it I am going back to my home in Florida" (D. 405).

The situation here is much the same as that which obtained in the case *In re Paullin's Estate*, 109 Atl. 13, where it was said (p. 14):

> "It is difficult to escape the impression that the witnesses on both sides have measurably overworked the convenient word 'home' in testimony touching statements made by decedent; but whether or not such impressions can be said to be justified, when it is borne in mind that decedent in fact had a winter residence and also a summer residence, references by her to either of them as her home are obviously without great force, unless made so by the context of her statements."

Green's conduct, actions and statements at the time he was compelled to move from the Waldorf-Astoria to the Sherry-Netherland Hotel are strongly indicative of what his true sentiments were with respect to his permanent home. It will be remembered that the Waldorf-Astoria was demolished in 1929, eight years after the Special Master finds that Green became domiciled in Massachusetts, and two years after he had commenced to occupy his winter residence in Florida. That year, instead of remaining in the South until the latter part of May or June as had been his custom, he cut short his winter trip and came back to New York City on April fifteenth. A month previously he had written the manager of the Hotel Plaza in New York City that his old home, the Waldorf-Astoria, had

been sold, that he was expected to vacate by May first, and that he was looking for new accommodations, specifying particularly that he wanted a place where he could keep his stamp collection. At about the same time, he wrote letters to various persons stating that it was necessary that he should return to New York City to find new living quarters. He told Dr. Pascal that he hated to leave his home in the Waldorf-Astoria, as he had considered it his home for so many years. He was actually the last tenant to leave. He wrote a letter to a party in Texas, in which he referred to moving from the Waldorf-Astoria to the Sherry-Netherland Hotel "our new home." When the time came for him to move, Miss Anne Owens, Executive Housekeeper at the Sherry-Netherland, who had formerly been Assistant Housekeeper at the Waldorf-Astoria, where she became acquainted with the Greens, was assigned to assist him and Mrs. Green in selecting furniture to be brought from the Waldorf-Astoria to the Sherry-Netherland. Green indicated to Miss Owens his desire that there be brought to the Sherry-Netherland the furniture and draperies that were in the portion of the Waldorf-Astoria apartment he had personally occupied. He particularly requested the transfer of certain rose-colored damask draperies, which were put up in the living room at the Sherry-Netherland. Several of the officials and employees who had been at the Waldorf-Astoria were transferred to the Sherry-Netherland when the former hotel was razed. Green told Miss Owens that he was not anxious to move, but he thought that going to the Sherry-Netherland, where he would be with the people whom he had known at the Waldorf-Astoria, would make him feel more at home. He said he wanted to take some of the atmosphere of

the old Waldorf-Astoria with him to the Sherry-Netherland and, as it was intended to render as much as possible the same type of service at the Sherry-Netherland as had been given at the Waldorf-Astoria, he thought he would feel very comfortable there. If, in fact, Green had abandoned his New York domicile and had adopted a Massachusetts domicile, the destruction of the Waldorf-Astoria would have furnished an excellent opportunity for him to have severed all ties in New York City, and would have made possible a very substantial saving in rent. Instead of abandoning New York, he secured a new and better appointed apartment at a considerably increased rent. His sentiment for the Waldorf-Astoria might have made him loath to leave there but would not have accounted for the acquisition of a more elaborate home. He left his winter home more than a month earlier than was his custom and came to New York City to personally supervise the moving. These facts negative any idea that he did not consider New York his domicile and intend to retain it as such.

New York has excepted to the finding of the Special Master, on page 33 of his Report, that when Green moved from the Waldorf-Astoria Hotel to the Sherry-Netherland Hotel he wanted to preserve the atmosphere of the old Waldorf-Astoria, on the grounds that such finding is not adequate and that he should have found the facts as recited above (See Exception No. 63).

In considering Green's occupancy of apartments at the Waldorf-Astoria and Sherry-Netherland Hotels, the fact that he was a tenant on a month to month basis

has an important bearing upon the question of a New York domicile. He could have terminated his relationships with New York City upon a month's notice at any time, not being bound by any long term lease or the owner of real estate that he would be forced to dispose of. He was free to abandon every semblance of a New York City domicile whenever he wanted to, but he never did. This is brought into relief when it is considered that, although he always claimed Texas as his legal residence, he stopped paying the small sum of $5.00 per month for a room there in 1914, whereas the rental of his New York City apartments from July 1, 1921, when he took possession of the Round Hills house and, according to the Special Master, made it his domicile, up to the time of his death amounted to the grand sum of $321,024. The annual rental of these apartments was more than the income derived by Green from an investment of half a million dollars. Whatever else may be said about Green, it cannot be denied that he inherited some of his mother's perspicacity and penuriousness. It was because New York City was his home, and had been his home since 1911, that he continued to maintain these luxurious apartments. The reasons why he did not spend more time in New York City will be developed hereafter. They were to a considerable extent fortuitous, but it is certain that after 1921 Green did not spend nearly a third of a million dollars merely for the purpose of having a temporary sojourning place in New York City on his trips North and South, while *en route* from Massachusetts and Florida (See pages 33 and 54 of the Master's Report, and Exception No. 65). He could have rented transient hotel accommodations for the time he spent in New York for a small fraction of the amount he paid as rental of his permanent apartment.

The evidence shows clearly that Green's friends and business associates regarded New York City as his home. The failure of the Special Master to so find has been duly excepted to (See Exception No. 7).

Although the Special Master found, at page 26 of his Report, that Green subscribed through a bank in Terrell, Texas, for $5,000,000 of Liberty Bonds during the World War, he overlooked the fact that he subscribed to between $3,000,000 and $3,500,000 in Liberty Bonds through New York City banks and organizations. His failure to make this finding is the basis of Exception No. 12.

Green was a noted philatelist. His collection ranked as one of the five largest in the world. He never lost his interest in that subject. He first took up collecting stamps while he was living at the West Ninetieth Street house in New York City. The permanent location of his collection was at all times in New York City, although on occasions he took portions of it with him on his travels. At the time of his death, more than eighty per cent of his collection was housed in the Sherry-Netherland Hotel and was valued at more than $1,000,000. Philately was his principal hobby. Exception has been taken to the finding of the Special Master, on page 33 of his Report, that a portion of Green's stamp collection was kept in his apartment in New York City and to that part of the Special Master's Report, on page 38, wherein he finds that the bulk of Green's stamps was kept in the vault in the basement of the Round Hills house (See Exception No. 48).

Exception has also been taken to that part of the Special Master's Report, on page 33, wherein he finds

that Green's interest in his stamp collection has been slight since 1927 (See Exception No. 49).

Green had a great love for his mother and reverenced her memory. Practically his only belongings which were intimately connected with his mother were the letters that she had written to him, over one hundred in number. These letters were always kept at his New York City home and were there at the time of his death. The failure of the Special Master to make a finding in this respect is covered by Exception No. 30.

As heretofore noted, Green voted in Texas until 1920, but he never voted elsewhere, and his failure to vote in New York cannot be counted against the maintenance by him of a New York domicile. Voting in Texas was an act calculated to fortify his claim to a pseudo-legal residence in Texas.

Green's social activities in New York City were much the same as they were at other places where he spent portions of his time. He was not a society lion, but occasionally entertained friends at his home and was in the habit of having young ladies he was educating spend portions of their winter vacations and Christmas holidays with him in New York City. His close personal friends were those whom he had made during the period he lived in Texas. Exception has been taken to the failure of the Special Master to find that Green's protegees spent portions of their vacations with him in New York City (See Exception No. 15).

In 1926, Green and his sister each donated the sum of $125,000 to Saint Mary's School at Peekskill, an Episcopalian institution for girls, to be used in the

erection of a wing in honor of the memory of their mother. A bronze plate, suitably inscribed to indicate the purpose of the gift, was placed upon the structure.

During the last three years of Green's life he studiously avoided New York City. This action was taken upon the advice of his personal counsel, Charles W. Pierson, because certain suits for damages had been commenced against directors of the Chase National Bank, in which Green was named as a defendant. His counsel stated that, in his opinion, if Green remained away from New York, it would not be possible to serve him with process. Green meticulously followed his counsel's advice in this respect and did not return to New York until he was brought to Lake Placid in 1936 on the advice of his physicians at a time when he was in his last illness.

At page 33 of the Special Master's Report, reference is made to the fact that Green and his wife had few personal belongings in their apartment in the Sherry-Netherland Hotel at the time of his death. There is nothing unusual about that when it is coupled with the fact that for three years previous to his death Green had been compelled to remain away from New York to avoid legal service. Under these circumstances it would not be expected that he and Mrs. Green would have much in the way of personal belongings there.

Exception has been taken to that part of the Report of the Special Master, on page 33, wherein he finds that Green in the last three years of his life avoided New York because of efforts to serve him in certain litigation against the directors of the Chase National Bank, because the Special Master did not find that this action

was taken upon the advice of his personal general counsel (See Exception No. 51).

At page 54 of the Report of the Special Master is a summary of the reasons why, in his opinion, there is not sufficient evidence to show that Green ever intended to make New York his permanent home. He states that Green rejected the suggestion when it was made to him by Mrs. Green and Mrs. Stafford in 1917 or 1918. This statement is without support in the evidence. The Record fails to show that Mrs. Green or Mrs. Stafford ever suggested to him that he make New York his permanent home or that he ever rejected it. The Special Master doubtless had reference to the testimony of Mrs. Stafford (D. 207) that she and Mrs. Green talked with Green about building a house on Long Island. It is true that Green said he did not want to build a house there, but by no stretch of the imagination could this be considered a rejection by him of a suggestion that he make New York his permanent home. He was living in New York City at the time and continued to maintain a home there for the rest of his days. The Special Master also stated that Green made no effort to become a voter in New York after he stopped voting in Texas. That is true, but it is also true that he made no effort to become a voter in either Massachusetts or Florida after he stopped voting in Texas in 1920. If the fact that he did not vote in New York shows that he did not intend to make New York his permanent home, it is equally strong evidence that he did not intend to make Massachusetts or Florida his permanent home. The Special Master next states that Green owned no real estate in New York, except what he acquired as a result of the foreclosure of mortgages.

This was due to the fact that he had adopted the custom of wealthy New York residents of living in hotel apartments. He paid the annual income of a half million dollars as rent, which was the equivalent of the maintenance of a substantial real estate interest there. The Special Master states that Green paid no personal or income taxes to New York. Likewise, he paid no personal or income taxes to Massachusetts or Florida. If this fact is proof that New York was not the domicile, it is equally strong proof that neither Massachusetts nor Florida was the domicile. He states that Green had no close friends in New York City and did not like the life or the people, but, at page 20 of his Report, he states that his close friendships were those formed in the early days in Texas. Green had no close friends in Massachusetts or Florida, which tends just as strongly to disprove his domicile in either of those States. He did not like the people in the vicinity of Round Hills and became embroiled in disputes with them. Because of his physical condition, it is probable that he did not like living in New York, which tends more strongly to prove his New York domicile, for despite this he continued to maintain his home there. It is true, as the Special Master states, that after 1921 he was unable to go to theatres or baseball games as theretofore (although he did not give up his box at the Polo Grounds until 1927) and was compelled to spend his time indoors and adopt hobbies which replaced his outdoor activities. These same hobbies were indulged in by him in Massachusetts and Florida. Due to favorable surroundings and weather conditions, he was able to get out in the open more at Round Hills and Star Island, but that was the very reason that he adopted the former as a summer residence and the latter as a

winter residence. The Special Master also states that Green removed all of the furnishings of his former residence at 5 West Ninetieth Street and all of the early associations with his mother, except her letters, to South Dartmouth. He had no use for the furnishings of the West Ninetieth Street house after he adopted the practice of living in hotel apartments, and it was natural that he should remove them to Round Hills when it became necessary to furnish the mammoth institutional type house that he erected there. His most cherished possessions, the letters written to him by his mother in her own hand, remained in New York. Just what "early associations with his mother" he removed to South Dartmouth are not specified by the Special Master or disclosed by the Record. The witness, Van der Putten, who selected the things to be moved from the West Ninetieth Street house to Round Hills and had charge of their removal testified that he had a small truck load of furniture shipped, which included two clocks and private things of the Colonel and a number of pictures (D. 173). The witness, Holcinger, testified that furniture was moved from the West Ninetieth Street house to Round Hills on three occasions between 1918 when the Greens moved to the Waldorf-Astoria, and 1928 that the old paintings were first sent up by Van der Putten and afterwards when the house was torn down the beds and carpets were taken up and in the summer of 1928, just before the house was demolished, the rest of the things were taken. The witness recalls a small picture of Green's mother that Mrs. Green had in her bedroom and which she took with her to the Waldorf. None of the things that Green moved from New York to Round Hills had any particular association with his mother. The fur-

nishings of the West Ninetieth Street house had been acquired by Green in Texas and there is nothing at all to show that the house contained anything in the nature of family heirlooms or of sentimental association with his mother. The statement that all of the early associations with his mother were moved to Round Hills is an incorrect and unwarranted generalization prejudicial to this Respondent (D. 113-4). His sworn statement to the taxing officials of New York City that he was not and never had been a resident of New York did not differ from the statements he made to the taxing officials of Massachusetts and Florida. If they are proof that he was not domiciled in New York, his statements to the Massachusetts and Florida taxing officials are likewise proof that he was not domiciled in either of those States. The Special Master also states that Green never went to his office, 111 Broadway, after 1921, and carefully refrained from visiting the City during the last three years of his life, because of pending litigation. Green's physical handicap prevented him from going to his office. The fact that pending litigation prevented him from visiting New York City during the last years of his life cannot be counted against the New York domicile, as it was an enforced absence. The Special Master next points out that his apartment in the Sherry-Netherland was under a temporary lease and had only been occupied by him for brief periods in the spring and fall while *en route* from Massachusetts and Florida. That there was a temporary lease argues more strongly for than against New York as the domicile. He could have moved out at any time, particularly when, in 1933, he knew that he would be required to be absent from New York for a long period of time on account of the bank suits. If he had not desired and intended to retain his

New York domicile, he would surely have given it up then, instead of continuing to pay rent in excess of $20,000 a year for a period of almost three years, when his death occurred. The amount of time spent by Green in New York City is not controlling, as will be set forth in detail at another point in this brief.

The paragraph of the Special Master's Report, on page 54, which has just been discussed, contains the important reasons which impelled him to find against a New York domicile. It is respectfully submitted that these reasons are inapplicable and wholly inadequate to support his conclusion.

Green's mother died in July, 1916. Previous to her death he had become moderately wealthy by reason of gifts she made to him. When she died he became very wealthy, as her entire estate was divided between him and his sister. He was then for the first time in a financial position whereby he could gratify his desires without counting the cost. He purchased a Great Lakes steamship and remodelled it into a yacht, which he named the "United States," and which was then reputed to be the largest private steam yacht in the world. On July 10, 1917, he married his housekeeper, Miss Harlow, and they spent their honeymoon on the yacht. They made a trip up Long Island Sound, in the course of which they inspected the Round Hills farm, and then returned to New York, after which they went to Texas, and returned to New York again in the latter part of December. After spending a couple of weeks in the West Ninetieth Street house, they took up their residence at the Waldorf-Astoria.

At page 35 of his Report, the Special Master comments that after Green's mother's death in 1916 and his marriage in 1917, he was free to establish a permanent home in any locality that he considered suitable, because he then had no attachment to the soil anywhere and was free from restraint. He overlooked the fact that Green had already established his permanent home in New York City where he was as much attached to the soil as are ninety-eight per cent of the people who make their homes in that city. His freedom from restraint was probably what led him to give up his less pretentious residence at 5 West Ninetieth Street and take a large and expensive suite of rooms at the Waldorf-Astoria.

The Special Master found, at page 32 of his Report, that during the latter half of 1917 Green lived on the "United States" anchored off West Eighty-Sixth Street, New York City, a finding that is not sustained by the evidence and has been duly excepted to (See Exception No. 62).

Green's mother had requested him to erect a monument to her at Round Hills. Exception has been taken to the failure of the Special Master so to find (See Exception No. 19). Round Hills had been in Hetty Green's family for over two hundred years and had been used by her and her aunt, Sylvia Ann Howland, as a summer recreational resort. Green and his sister had been there a couple of summers when they were children. When Green visited there in 1917, he planned to spend his summers there on the yacht and arranged for the construction of a wharf at which to moor the yacht, a water tower to supply it with water,

for the construction of bath houses and for farming operations to supply him with vegetables.

The Special Master, at page 35 of his Report, found that when Green visited Round Hills in August, 1917, he determined to develop the property into a great estate and build there a monumental home. This finding is excepted to (See Exception No. 52) as it distorts the facts and creates an impression that is false and erroneous. The Record is clear that Green's intention when he first went to Round Hills was to live on the yacht during the summers and that the building of a house there was a later development.

After the wharf was constructed at Round Hills, it was found that, due to water and tidal conditions, the plan to moor the yacht there was not feasible, so in the summer of 1918 the yacht was moored in Padanaram Harbor, several miles from Round Hills, and Green lived upon it there, making frequent excursions on it to Round Hills.

In 1919, Green again went to Massachusetts for the summer and started to live on the "United States" in Padanaram Harbor, where he remained until the boat sank in August, but continued his excursions to Round Hills.

Living at a considerable distance from Round Hills seems to have proven unsatisfactory, for in June of 1919 Green contracted for the erection of a house at Round Hills. He had caused plans to be prepared by A. C. Bossom, an architect of New York City. The building was designed along institutional lines, but

the plans were so arranged that it could be used as his residence for the time being. Green stated that he was going to use the house for his summer home.

The summer of 1920 finds Green again in Massachusetts on a houseboat in Padanaram Harbor. He occupied himself with overseeing the construction of the Round Hills house and other buildings on the property.

The land upon which the house was being constructed had been part of the estate of Hetty Green and was owned by Green and his sister, Mrs. Wilks, as tenants in common, in which condition the title remained until Green's death.

In 1921, Green again repaired to Massachusetts for the summer. He lived on the houseboat in Padanaram Harbor for a while, and late in July moved into the Round Hills house, which had then been completed.

The house was enormous in size and was constructed of granite walls with a slate roof. It was entirely fireproof. The ceilings were hung and the walls were made of terracotta or gypsum blocks. The frame was so arranged that the walls bore no weight and could easily be removed or shifted. The house was generously sprinkled with electrical outlets, most of which were concealed, the purpose being to have them available when the building should be made over into an institution. The principal rooms in the house were wainscoted along institutional lines. Because of the fact that, from an architectural standpoint, the building was institutional in type, it had been found necessary to

reate enormous rooms to permit it to be utilized tem-
orarily as a residence, and, as a result, the dining
ooms, living rooms, library and bedrooms were tre-
endous in size.

Exception has been taken to the failure of the Special
laster to find that the Round Hills house was con-
ructed by Green for other purposes than a home and
at he was using it to live in until he had developed
ound Hills for a memorial for his mother and his
ncestors (See Exception No. 20).

Exception has also been taken to the failure of the
ecial Master to find that by far the larger percentage
the electrical outlets in the Round Hills house were
ic :aled and intended for use when the building
ould be converted into an institution (See Exception
. 25).

Green frequently announced his intention of carry-
out his mother's request for a memorial and said
t he would convert the house into some type of an
titution when he and his sister decided what they
nted to do in that regard. During most of the years
er the house was built, Mrs. Wilks paid the taxes
n the share owned by her in the house and upon
land on which it was erected. Exception has been
n to the failure of the Special Master to find that
. Wilks paid these taxes (See Exception No. 26).

the course of the construction of the Round Hills
se, it developed that the architect had arranged for
carving of Green's initials in the stone over the
ico at the main entrance. When Green discovered

this he immediately ordered his initials to be chiseled off and stated that he did not wish his name to appear upon the building as it was to be a memorial to his mother. He arranged for the preparation of bronze plates containing suitable inscriptions to show that the house was a memorial to his mother and his ancestors. He also ordered changes to be made in the engraving of the stonework of the building in order to bring the design into more bold relief and give it the appearance of an institution, at which time he stated that the house was not to be a residence. He discussed the use of the building as an institution with many of his friends and acquaintances, but death intervened before his plans in that respect were culminated.

Exception has been taken to the failure of the Special Master to find that Green had his initials cut from the stonework of the Round Hills house and that he said he did not wish his name to appear upon property owned by his mother or his ancestors (See Exception No. 21).

In arranging for a tablet to be erected in connection with the old whale ship "Charles W. Morgan," Green stated that he did not wish to have his name placed upon the tablet if it was to be erected upon land owned by him and his sister, but that it would be all right to put his name on it if it should be erected on land owned entirely by him. The failure of the Special Master to so find is covered by Exception No. 22.

The importance of the evidence with respect to the carving of Green's initials from the stonework of the house and his refusal to have a tablet bearing his name erected upon land owned by him and his sister is very great. There surely could be no reason why he should

wish to have his name and initials omitted if the building was to be his home. That he had no adversion to such procedure is shown by the fact that he had his initials conspicuously displayed in several places on his Star Island home.

One of the principal facts relied upon by the Court in *Matter of Trowbridge*, 266 N. Y. 283, *supra*, was the inscription which Trowbridge had engraved in the stone mantlepiece above the fireplace in the dining room of his Connecticut house, which read:

> "*O noctes cenaeque deum quibus ipse meique ante larem proprium vescor*" ("O nights and feasts of the gods which I and mine enjoy before our own hearthstone"). (P. 290.)

Other facts of importance in the *Trowbridge* case were that over the main entrance to his Noroton house was a cartouche bearing the coat-of-arms and crest of the Trowbridge family cut in the marble and on either side of the dining room mantelpiece were doors upon which were the coat-of-arms of the Trowbridge family. Also, cut in the marble upon the structure just outside the parlor was the Trowbridge family motto: "*Spes pons vitae*" (Hope, the bridge of life). [Trowbridge finding No. 12; Conn. Exs. 14-G, 14-K, 14-L, 14-M, pps. 478-83 and 14-P, p. 487, Trowbridge Record.]

Had Green allowed his initials to be placed upon the Round Hills house or a tablet bearing his name to be erected on the premises which had belonged to his mother, such action would have been strong evidence to support the theory of a Massachusetts domicile. Conversely, the fact that he ordered his initials cut

from the stone and refused to have his name appear on the tablet is strong evidence that he did not intend to establish a Massachusetts domicile.

At pages 53-4 of his Report, the Special Master states that Green had some unformulated notion of leaving a memorial to his mother, his sister and himself, and that the Round Hills house seemed to him to be the most appropriate memorial he could leave after death and the most permanent home he could enjoy while living. Exception to this statement has been taken (See Exception No. 71). The facts which have just been set forth show conclusively that Green had no idea of making the Round Hills house into a memorial for himself. Also, the evidence shows that he did not intend it to be a memorial to his sister.

Green's intention and action with respect to making the Round Hills house into a memorial for his mother indicated much more than is implied by the use of the word "notion." His mother requested him to erect a monument to her memory. He proceeded to do so and caused a mammoth building, designed along institutional lines, to be erected at an expense of nearly half a million dollars. He frequently stated that it was his intention to use the building as an institution.

The Special Master's statement that the Round Hills house seemed to him to be the most appropriate memorial he could leave after death and the most permanent home he could enjoy while living is gratuitous and without support in the Record.

Green invariably referred to Round Hills as his summer home, and never said that it was his permanent home.

A case closely in point on the facts in relation to the memorial plan is *Matter of Martin*, 173 App. Div. 1, revsg. 94 Misc. 81, *supra*. Martin had purchased a house in London and fitted it up as a residence, with the intention of living there while in London, but regarded it as having been acquired primarily to provide a home for a collection that had belonged to his deceased friend, Sands. Sands had made a pecuniary bequest to Martin with which to provide a place where the collection could be kept. The lower court held that Martin was domiciled in London, but the Appellate Division held that his domicile in New York City had not been lost, despite the fact that his domicile there was in a hotel where he did not even have permanent quarters. Martin's London house did not become his domicile because he acquired it for the special purpose of housing Sands' collection. By the same token, the Round Hills house, having been built by Green for the special ~~purchase~~ purpose of a memorial to his mother, did not become his domicile, although he intended to live there summers while his plans for the memorial were being developed.

The evidence is to some extent conflicting as to whether Green intended to turn the Round Hills house into an institution during his lifetime or after his death. In nearly every instance when he spoke about making it into an institution, he did not fix any definite time. The fact that he made no provision in his will for converting the house into an institution is inconsistent

with the contention that he did not intend that it should become an institution until after his death, but there is nothing in the evidence inconsistent with an intention to make it an institution during his lifetime, despite the fact that he died before his intention was effectuated. The fact that he made no provision in his will for the maintenance of "Whaling Enshrined" after his death is evidence of an intent to accomplish his purposes with respect to all of his Round Hills interests while he lived. If his motivating thought was that the Round Hills place should become a memorial after his death, he most certainly would not have neglected to make suitable provisions therefor in his will.

Exception has been taken to that portion of the Report of the Special Master on page 36 wherein he finds that Green retained the whole Round Hills estate of about two hundred seventy acres up to the time of his death (See Exception No. 70). This is contrary to the evidence, which shows that the land inherited by Green and his sister from their mother, upon which the Round Hills house stood, consisted of about one hundred thirty acres and that this land continued to be owned by him and his sister as tenants in common up until the time of his death. Green did acquire additional land at Round Hills amounting to about one hundred forty acres and the combined acreage at Round Hills was two hundred seventy acres, but he never owned more than an undivided one-half interest in the one hundred thirty acres.

The Report of the Special Master indicates that Green had considerable sentiment for the Round

Hills place because it had been in his mother's family so many years, and seeks to translate this into an argument in support of the finding of a Massachusetts domicile. It is true that Green sometimes spoke of the place as having been in his mother's family, but his true sentiment with respect to it is found in the fact that he grossly neglected the house upon the premises which had been the home of his ancestors and was known as the old Howland house. He allowed it to fall into such a bad state of repair that it was dangerous to even enter the building. It continued in this state until after his death, when the administrator appointed in Massachusetts found it necessary to make certain repairs in order to prevent it from becoming a nuisance. A graveyard was maintained in connection with the old Howland house. Green's lack of sentiment for his ancestors is shown by the fact that he made use of this graveyard for the purpose of burying a dog. Exception has been taken to the failure of the Special Master to find that Green had no interest in the Howland ancestral home (See Exception No. 27).

At his own request, Green was buried in the burial plot at Bellows Falls, Vermont, which had been in his family for more than one hundred years and contained the graves of his mother, father, grandmother, grandfather and great great-grandmother. The failure of the Special Master so to find is the basis for Exception No. 46. This is a fact of much greater importance to indicate that Green was not domiciled at Round Hills than is the fact seized upon by the Special Master, at page 55 of his Report, to support a Massachusetts domicile that Green's obsequies were conducted

at Round Hills, particularly as it does not appear that they were so conducted at his request. Burial at Bellows Falls points away from Massachusetts.

Isham v. Gibbons, 1 Bradf. 69, *supra*.

Round Hills was Green's summer residence, pure and simple, and never became his domicile. Before he erected the house he stated that he was going to spend his summers there. When the house was in course of construction and after it was finished, he referred to it as his summer home and continued to refer to it as such throughout his life. There is not an iota of proof in the Record showing that Green ever intended it to be his permanent home or his domicile. His friends and associates regarded it as his summer home.

Exception has been taken to the failure of the Special Master to find that Round Hills was a summer home in the ordinary sense of the term and was so regarded by Green and his friends and associates, and was never intended by him to be his domicile, and that it had been used as a summer recreation place by his mother and by his great aunt, Sylvia Ann Howland, before him (See Exception No. 31).

Each and every year from the time when he first went to Round Hills in 1918 until the year preceding his death, Green spent only the summer season at Round Hills. With few exceptions he came there on the first of July and remained for periods varying from three and a half to five and a half months. The late summer and fall at Round Hills, when the weather is propitious, is to be preferred to the early summer when a great deal of fog and dampness is encountered.

Round Hills is situated between two summer colonies, Nonquit on the north and Salters Point on the south. Nonquit is a summer resort. The people who summer there arrive in June and July and usually leave in September or October, when their houses are closed up, although some stay late in October and a few remain until November. Salters Point is also a summer colony and most of the people there close their houses during the winter, although a few families live there the year round. Former Ambassador Alanson B. Houghton has his summer home immediately below Round Hills.

The fact that a large portion of the population in the vicinity of Round Hills is transient and consists of summer residents is entitled to consideration in determining whether Green intended to make Round Hills his domicile.

Reed's Will, 48 Orc. 500, *supra*.

That occupancy of a summer home does not have the effect of changing domicile has been held repeatedly.

In the *Town of Clinton v. Town of Westbrook*, 38 Conn. 9, it was said (pp. 12-13):

> "There seems to be no more occasion to hold that the temporary occupancy by these parties of a house in Wallingford interrupted their legal residence in Durham, than there would be to hold that a citizen of one of our cities who occupies his own cottage by the sea side or in a country town, during the summer months, thereby changes his residence. The *animus revertendi* exists in either

case, and controls the legal consequences of the act."

See also:

Estate of Austin, Myrick's Probate Reports [1872-9] 237, *supra*.

The late John D. Rockefeller had a summer home in Forest Hill, near Cleveland, Ohio, to which he annually repaired with his family, servants and secretary, his intention being to return to New York at the close of the summer season. In a proceeding in the Federal Court, it was held that his domicile was in New York. The facts of that case are very similar to those in the case at bar. Rockefeller also had a winter home in Florida. The Court said:

"There can be no doubt upon the testimony introduced that Mr. Rockefeller's coming to East Cleveland was for the purpose of a summer visit, without any intention on his part of giving up his residence in New York, but with the fixed purpose to return to his New York home in the autumn."

Rockefeller v. O'Brien, 224 Fed. 541, 543; affd. 239 Fed. 127; appeal dismissed 244 U. S. 650.

It was held in *Matter of Packard*, 223 App. Div. 491, affd. 251 N. Y. 543, that a summer or seasonal home did not become the domicile, even though it was the desire of the owner that it should. The opinion of the Appellate Division on the question of domicile was short, and the Court of Appeals affirmed without opinion, but the record shows that William D. Packard, the decedent, one of the Packard brothers of automobile fame, who died on November 11, 1923, had been

domiciled in Warren, Ohio, but decided to change his domicile to New York State because of oppressive personal property taxes in Ohio. He consulted attorneys and was advised as to the steps deemed necessary to be taken to bring about a change of domicile, which advice he followed. For some time he had had a modest summer home on the shores of Chautauqua Lake in New York State. When he decided to change his domicile, he erected a very substantial house on said lake, suitable for year-round occupancy, which he called "Packard Manor," and in which he lived during a portion of each year. In the years 1921, 1922 and 1923, he lived there from May to October, inclusive. The new home was erected in 1917 and cost $164,000. Packard made his federal and state income tax returns on the basis of being a resident of New York State. He did not vote anywhere. For the last several years of his life he was an invalid, totally blind and partially paralyzed. After the erection of the house in New York State, he continued to maintain a residence in the City of Warren, Ohio, and in 1920 constructed there a duplicate of the house at Chautauqua Lake. He filed non-resident personal property tax returns in Ohio. It was held that he was domiciled in Ohio at the time of his death and that his summer residence in New York State had not become the domicile, despite his definitely expressed intention that it should.

In *State v. Ross*, 3 Zabriskie, 517, a case involving a party domiciled in Georgia who had a summer residence in New Jersey, Chief Justice Green said (p. 521):

> "A temporary residence, for the purpose of business or pleasure, continued for days, weeks, or even months, while the party's domicile is elsewhere, and while he has no intention of becoming a citizen of this state, does not, as has been already said, constitute an inhabitant. It is perfectly immaterial, for this purpose, whether he makes his temporary residence in his own dwelling, with his domestic establishment and retinue about him, or as a mere lodger in the house of another."

When Green built the house at Round Hills his domicile was in New York City. He always went to Round Hills for the temporary purpose of spending the summer and to obtain recreation. He had no intention of becoming a citizen of Massachusetts. The facts that he remained there annually for several months and lived in his own dwelling with his domestic establishment and retinue about him did not operate to change his domicile.

In the last cited case, Mr. Justice Elmer said (p. 525):

> "I do not think that it is the meaning of the act, that the citizen of another state, who comes into this state with his family, and lives for a few weeks or months in a lodging house or in his own dwelling, with the intention of returning, should be considered as residing in the township or ward in which his lodging or dwelling happens to be situate, so that he is liable to be taxed for bonds or other personal property having no proper locality within this state."

In *Younger v. Spreckels*, 12 Cal. App. 175, it was said (p. 177):

"The mere inhabitancy of a summer home or country house at certain seasons of the year or at certain times would not make the party inhabiting such house a resident of the county in which such house is situated. The material question is the *animo manendi*. Although one may abide at times in a place for pleasure or health or repose it does not become his domicile unless it be his intention to remain there."

Although a person's dwelling-house in one state is more comfortable or better furnished than his dwelling-house in another state and he spends the greater portion of his time there, these facts are not conclusive on the question of domicile.

Hurst v. City of Flemingsburg, 172 Ky. 127.

Green's summer home having been his place of outdoor recreation, the fact that he enthused about the things he was doing there does not indicate that he had a domiciliary intent in regard to it. A somewhat similar situation was under consideration in *Huntly v. Gaskell*, 1906 A. C. 56, *supra*, where the Court said (p. 71):

"No doubt at all he was very fond of the place; and, being a person of emphatic and florid speech he spoke of it occasionally—especially (although not always) when addressing Deeside people—as his true home, and the place where he felt at home. But it is a fallacy to regard this an election of one home in substitution for another. A great many people who have a house in town and a house in the country have two homes—they speak of them as such, each is the home when the household goods are there; and the country house, being the place of recreation, is generally the object of the more exuberant expressions of attachment."

In *Dunn v. Trefry*, 260 Fed. 147, *supra*, the appellant (like Green) had three residences, the original one in Newport, Rhode Island, another in Holderness, New Hampshire, and the third in Boston, Massachusetts. She spent her winters in Boston, her summers in Holderness and the spring and autumn in Newport. It was held that she was domiciled in Newport, the Court saying (p. 149):

> "The appellant's domicile in Newport is presumed to continue there until it is shown to have been changed, and the burden of overcoming this presumption rests upon the defendant. Mitchell v. United States, 21 Wall. 350. This we think has not been done. On the contrary, the evidence shows that the appellant never has intended to abandon her domicile in Rhode Island. Her residence in Massachusetts has not differed from her residence in New Hampshire, and it is not fair to say that she has intended to make either place her domicile."

Green's New York domicile is presumed to continue and there is no proof that he ever intended to abandon it. His residence in Massachusetts did not differ from his residence in Florida and it is not fair to say that he intended to make either place his domicile.

Justice Davis in *Gilman v. Gilman*, 52 Me. 165, in considering the application of the rules of domicile to situations in which there are both country or summer and city or winter residences, said (p. 176):

> "If any general rule can be applied to such cases, we think it is this: *that the domicil of origin, or the previous domicil, shall prevail.* This is in accordance with the general doctrine, that the *forum originis* remains until a new one is acquired. 3 Kent, 431; *Kilburn v. Bennett*, 3 Met.,

199; *Moore v. Wilkins*, 10 N. H. 455; *Hood's case*, 21 Penn., 106. And this would generally be in harmony with the other circumstances of each case. If the merchant was originally from the country, and he keeps up his household establishment there, his residence in the city will be likely to have the characteristics of a temporary abode. While, if his original domicile was in the city, and he purchases or builds a country house for a place of summer resort, he will not be likely to establish any permanent relations with the people or the institutions of the town in which it is located."

That the situation in the case at bar is not unusual is evidenced by the statement appearing in *Kennan on Residence and Domicile*, at pages 107-8, where the author says:

"Even with people of moderate means it is not unusual to have both a city and a country residence; while in the case of the very wealthy it often happens that they have, in addition to their city home, a winter residence in Florida or California, a summer home on the seashore and a hunting lodge in the wilds of Canada. In a recent case of considerable importance it was shown that a certain well-known millionaire had several costly residences in widely separate localities which he or his family occupied from time to time."

At page 109, Kennan says:

"The principle involved may be illustrated by the following state of facts which will be met with very frequently: A has large business interests in B where he has had his principal residence for many years. The mere fact that he declares his residence to be at C where he spends a few months every summer in a country home is not controlling; nor would the fact that he voted at the latter place necessarily be conclusive."

If a declaration that a summer home is the domicile, coupled with the act of voting there, would not be conclusive, how much more inconclusive the facts in this case are. Green always declared that his residence was not in Massachusetts, he never voted there and refused to run for public office there.

In *Matter of Long*, 167 Supp. 1023, the decedent had a farm in Pennsylvania and lived on it from May until December, during the later years of his life. The remainder of the years he lived in New York City. In his will he stated that it was his intention to make the Pennsylvania farm his legal residence for all purposes. He referred to it as his summer residence. The will was executed a little more than a year before he died. It was held that the summer residence did not become the domicile, despite the fact that Pennsylvania was his domicile of origin and New York his domicile of choice. The Court said (p. 1024):

> "From these facts it would appear that, while the decedent's domicile of origin was in Pennsylvania, he abandoned that domicile and acquired a domicile in New York about the year 1880, when he built the house in this city and occupied it as a home for himself and his family. While he evidently intended in the later years of his life to change his domicile from New York to Pennsylvania, he did nothing of a decisive controlling character which would indicate that he had actually abandoned his domicile in this state and acquired a new domicile in Pennsylvania."

Green's acts, said to evidence a change of domicile from New York to Massachusetts were of a much less positive character than were the acts of the decedent in the case cited.

In *Matter of Frick*, 116 Misc. 488, *supra*, it appeared that Frick had a residence in Pennsylvania in which he was originally domiciled, which he had acquired in 1882, that in 1902 he acquired a summer residence at Pride's Crossings, Massachusetts, where most of his summers were spent until the time of his death, that in 1905 he leased the Vanderbilt house at 51st Street and Fifth Avenue, New York City, and in 1914 took possession of his new mansion at 70th Street and Fifth Avenue in said city. From 1904 to 1919 he divided his time between Pittsburgh, Philadelphia, New York, Pride's Crossing and various summer and winter resorts. The time spent by him in New York continued to increase from year to year. He was held to have been domiciled in Pittsburgh. Surrogate Foley said (p. 493):

> "The establishment of a separate dwelling in another state, and the relative size or magnificence of the various houses conducted by Mr. Frick are not tests of his change of domicile. If so, the establishment of a summer residence in Massachusetts in 1902, antedating the acquisition of his first New York residence, would have effected a change of domicile from Pennsylvania to Massachusetts. The maintenance of each of the independent dwellings in New York City and Pride's Crossing did not supplant, but paralleled the continuation of his domicile at Pittsburgh."

The Report of the Special Master indicates that the matters of size, cost and magnificence played an important part in guiding him to his conclusion. He refers to the "monumental home" at Round Hills, the sixty buildings on the property, the elaborate furnishings of the house, the large number of acres in the property, the expenditures of nearly $7,000,000 at Round Hills as compared with $1,500,000 at Star Is-

land, etc. As stated in the opinion in the *Frick* case, these elements are not determinative of domicile.

The Court will doubtless take judicial notice of the fact that there is nothing unusual about a multimillionaire having a summer home on the seashore. The Special Master recognized this when he referred to the millionaires' palaces on the rocks at Newport. If summer and winter homes ~~may~~ become domiciles, despite the fact that the owners have not given up their previous domiciles elsewhere, many of our foremost citizens are due to receive a rude shock.

In referring to Round Hills, Green and his secretaries and servants often called it "the farm" or his "country place." The failure of the Special Master to so find is covered by Exception No. 33.

In *In re. Zerega's Will*, 20 Supp. 417, the decedent had residences in New York City and in Westchester County, New York. He referred to his Westchester residence as a "country seat" or "country place," which the Court considered evidence tending to establish that it was not the domicile. In this case, the Court also considered proof that the country place was closed in the fall and left closed until the owner came back in June to be evidence that it was not the domicile.

Proof that Round Hills was nothing more or less than a summer home is supplied by Green's attitude toward it and the way in which it was conducted.

The Round Hills house required a large staff of servants to look after it and supply necessary services while

Green lived there. In 1921, the first year that the house was opened, the servants were kept the entire year, although Green left there about the middle of October. The reason for this is not disclosed by the Record. It may have been that the regular routine had not been developed, or that some other reason existed for keeping a full staff of servants the first winter. However that may be, after 1921 until the Star Island house was occupied in 1927, the servants at Round Hills were employed for the summer only, with the exception of a few who remained during the winter and acted as caretakers. In 1927 and thereafter, the servants were employed on a year round basis and divided their time between Round Hills and Star Island.

The Special Master evidently became confused as to the proof in regard to the employment of servants at Round Hills, for, at page 38 of his Report, he finds that after the winter of 1921-22 a skeleton staff of seven or eight servants was left in the Round Hills house in the winter and the remainder went back and forth between Round Hills and Florida. This is covered by Exception No. 53, which New York considers of great importance in proving that Massachusetts did not become the domicile in 1921 or at any other time. This will be developed later on in this brief.

Each year after the Round Hills house was occupied, when Green left at the close of the summer season, the house was closed, storm doors were put on and the windows were boarded up, the furniture and pictures were covered with cloths, the silverware was put away in a safe, the china was wrapped up and put away, the

linen was put away, the flowers that had been used in the house were put back in the greenhouses, the main kitchen was closed up so that it could not be used, and the draperies and hangings were covered with cloth bags. In other words, the house was closed up so as to be no longer suited for occupancy by the owner in precisely the manner that people who own summer homes close them up at the end of each season. The finding of the Special Master, at page 39 of his Report, that the furnishings were covered and protected is deemed inadequate as it does not give a full picture of the desolateness of the Round Hills house during the bleak New England winters. Exception to the finding has been taken (See Exception No. 54).

The Special Master also found, at page 39 of his Report, that the Round Hills house was kept heated throughout the winter. Such finding standing by itself may well convey an erroneous impression. It was necessary to heat the house in winter in order to protect it from the elements, and the Special Master should have found this (See Exception No. 24). To merely state that the house was heated in winter creates the impression that it was heated in order that it might be ready for occupancy, which is not the fact. During the fifteen years that Green occupied the Round Hills house he never spent a single day there during the winter season, and he came there before the first day of July only in the years 1934 and 1935.

Green's activities at Round Hills were such as a person of his personality and bents might be expected to indulge in at a place of summer recreation. He dabbled with scientific matters in the same manner that

a child picks up and discards toys. He would engage in first one thing that caught his fancy and then lose interest in it and take up another. Being a man of great wealth, it was possible for him to occupy himself during the outdoor season with such things, the same as the average person goes in for golf, tennis, or other sports. It must be remembered that Green was not normal physically, but had lost one of his legs and suffered from rheumatism and arthritis so that the diversions that occupy the recreational time of the average person were denied to him. There was nothing about Green's interests at Round Hills that was of a domiciliary nature. On the contrary, it would be most unusual for a person to turn his domicile into a public amusement park, equip it with radio broadcasting stations with immense towers over one hundred forty feet in height, turn his lawn into an airplane field, his private beach into a Coney Island and erect a Neon sign on his house with letters twelve feet in height to serve as an aviation signal. All these things are compatible with a summer recreation place.

Green had been interested in radio long before he built the Round Hills house. He found pleasure at Round Hills in erecting a large and well equipped radio broadcasting station and also placed loud speakers at various points on the premises to provide entertainment for the public who came there in large numbers to listen. He thereby incurred the enmity of his neighbors. Among his notions was one that he could broadcast music from the shore in front of his house to the passenger ships as they passed by on the ocean. So great was his interest at first that when the radio station was being built in 1922 he remained at Round

Hills until December seventeenth to follow the work, but he soon lost interest and in 1926 or 1927 ceased broadcasting operations. During the brief period that he played with the idea, he had programs transmitted by wire from New York City to be rebroadcasted at Round Hills.

The facilities of the broadcasting station were made available to the Massachusetts Institute of Technology for experimental purposes after broadcasting was discontinued.

Photography also claimed Green's interest for a while. In 1924, he equipped a photograph studio, which was modern and complete in every respect, and employed a photographer to take charge of it. He built a house to use in taking photographs that was so arranged that it could be turned in a circle while the camera remained stationary and caused certain experiments to be conducted. The photographic activities were confined to the summer. In the winter the studio was closed, the cameras were covered with cloth, the liquid chemicals were thrown away, and the lenses were taken to the big house and stored there. The studio was closed up so that it would be all right for the winter. Each summer after Green arrived at Round Hills, the studio would be opened up and made ready for use again. By 1928 Green had lost interest in photography and after that year the studio was not operated. Exception has been taken to the failure of the Special Master to find that Green discontinued his interest in photography and closed his photographic laboratory at Round Hills in the year 1928 (See Exception No. 29).

Shortly after Lindbergh made his historic flight to Paris, and probably inspired by that event, Green became interested in aviation and spent a large sum of money in turning the land at Round Hills immediately adjoining his house into an aviation field, erecting an airplane hangar, a blimp house, and a marine runway. He encouraged the public to use the field and sold airplane supplies at cost. With his approval, one of his employees established an aviation school. As before stated, a huge Neon sign, consisting of letters twelve feet high, spelling "Round Hill," was erected on top of the Round Hills house. His interest in aviation gradually declined and finally ceased in 1934.

Exception has been taken to the failure of the Special Master to find that Green had a red Neon sign made of letters twelve feet in height placed on top of the Round Hills house as an aviation beacon (See Exception No. 23).

The Massachusetts Institute of Technology was permitted by Green to carry on certain research work at Round Hills and he contributed toward it. Among other things, experiments were conducted in connection with communications with aircraft, fog dissipation and the smashing of atoms. In 1934, Green lost all interest in this work, as evidenced by his refusal to make further contributions.

Another outlet for Green's enthusiasm was the acquisition by him of an old whaling ship, the "Charles W. Morgan", which he caused to be brought to Round Hills and there placed on exhibition. He created a corporation, known as Whaling Enshrined, to hold ti-

tle to, care for and exhibit the "Morgan". People came to Round Hills in swarms to visit the ship, which was manned by a full crew. He also started a whaling village, which was designed to become a part of the whaling exhibit, and in that connection caused certain buildings to be moved to Round Hills, including a candle shop, an oil refinery and a blacksmith shop. He commenced the construction of a whaling museum and the concrete foundation walls were put in, but the project was later abandoned and the walls covered up. The reason for giving up this idea was that Mrs. Green suggested to him that the Round Hills house would be more satisfactory as a museum and he acquiesced in the suggestion. A portion of the house on the third floor was set aside as a whaling museum, but his plans for devoting the house in its entirety to that purpose never culminated.

Exception has been taken to the failure of the Special Master to make a finding that in 1925, after the foundation was constructed, Green abandoned the erection of a whaling museum at Round Hills because he thought the Round Hills house was better suited for that purpose, it being his intention to erect a smaller house on the Round Hills property for his use while spending the summers there (See Exception No. 28).

By permitting the public to use Round Hills as a recreational place, in the nature of an amusement park, Green evidenced an intention not to make it his domicile. Such use characterized the occupancy there as a place for outdoor recreation but was wholly inconsistent with the idea of a permanent home.

From the very beginning of his occupancy of the Round Hills house as a summer residence, Green encouraged the public to come to the grounds. People came there by thousands to listen to the radio broadcasts from loud speakers. They came there by thousands to bathe in the ocean. They came there by thousands to visit the old whaleship. In October, 1925, Green told a reporter for a Boston newspaper that he had had as many as twenty thousand visitors at Round Hills in a day. From 1925 to 1935, 1,275,923 people visited the whaleship.

Numerous signs directing the public to Round Hills were erected on roads leading to the premises and there were numerous parking signs at the entrance to the property and on the premises. Texas Exhibits 337 to 342, inclusive, are photographs which give a fair representation of various traffic signs and of the way in which the premises were arranged for the accommodation of the public. The use of the property by the public necessitated constant attention to the grounds. The road along the beach, the beach itself and the adjacent airport would be littered with wastepaper, swill and other refuse left there by the public. It took from eight to ten men to clean up the premises after a large crowd had been there. Visitors parked their automobiles on the beach and used them for dressing rooms. Others put up tents to dress in. Typical crowds at the beach are shown by the photographs which constitute Florida Exhibits 41 to 45, inclusive. Green permitted the operation of a diner or hot dog stand for the accommodation of the public. It is hard to conceive of a place devoted to such purposes as being a man's home. On the contrary, the indication is that

of a place where the restraints associated with a home are cast aside and where the carnival or holiday spirit is given full rein.

Exception has been taken to the failure of the Special Master to find that the grounds at Round Hills were used by the public in summer in much the same manner as an amusement park (See Exception No. 34).

The Special Master, at page 47 of his Report, finds that everything Green did in Florida indicated a seasonal vacation and relaxation from physical and mental effort, such finding being used to establish that Florida was not the domicile. With this finding New York agrees, but a seasonal vacation and relaxation from physical and mental effort was as strongly indicated with respect to the Round Hills establishment, and likewise tends to establish that Round Hills was not the domicile. The Special Master erred in not making a finding in regard to Massachusetts such as he made in regard to Florida. Exception No. 32 covers this point. Both Star Island and Round Hills were seasonal homes and neither ever became the domicile.

A point of importance with respect to Round Hills being the domicile is that on the different occasions when Green was taken seriously ill there his family physician, Dr. Pascal of New York City, was sent for to attend him. There is no suggestion that there were not competent physicians at New Bedford. Green did what any person of wealth would do if taken seriously ill while on his summer vacation. He sent back home for his family physician to come and attend him.

The failure of the Special Master to find that on different occasions when Green was taken seriously ill at Round Hills his family physician in New York City, Dr. Henry S. Pascal, was sent for and attended him at Round Hills is the basis of Exception No. 35.

There has been much ado because of the fact that Green did not enter Massachusetts until the first day of July during most of the years that he spent the summer there, and never remained as long as six months. An attempt has been made to create the impression that Green would have spent more time in Massachusetts and would have made it his permanent home if he had not been of the belief that if he came into Massachusetts before July first, or remained for more than six months, he would have been subject to taxation there on his income. Facts are stubborn things and the fact is that Green never was in Round Hills except during the summer and fall. There is no contention by any one that, as a matter of law, Green would have been subject to income taxation because of going into Massachusetts before July first, or because of remaining there more than six months, and there is likewise no suggestion that Green did not know and understand the law. His personal attorney, Charles W. Pierson, advised him in January, 1918, that the word "inhabitant" as used in the Massachusetts income tax law meant a person legally domiciled in Massachusetts and that he was not taxable under said law, although he spent part of his time at his "Round Hill Farm." In 1920, a change in the Massachusetts income tax law struck out the sentence "Every person who is an inhabitant of the commonwealth between the first day of January and the thirtieth day of June, both inclu-

sive, in any year, shall be subject to the taxes imposed by this act." Thereupon, as Green had frequently asserted that because of this provision he could not stay in Massachusetts longer than six months, his local counsel in New Bedford, John M. Bullard, advised him that whatever restriction there might have been upon his movements had been removed. Bullard even suggested that he might like to come to Round Hills earlier. Notwithstanding this change in the law, Green continued to come to Round Hills on July first in 1930, 1931, 1932, and 1933 as he had done consistently since 1921. In 1934 he came there on June twentieth, and in 1935 on June eighteenth. In the two latter years, Green was avoiding New York City because of the law suits.

Th embarrassment of the proponents of a Massachusetts domicile because of the fact that Green spent only his summers in that state can be understood. Their attempt, to cover this up by attributing to him a motive that did not exist, for not spending more time there is visible evidence of the weakness of their case and shows the extremes to which they have been put.

Exception No. 36 is to the failure of the Special Master to find that Green has been advised repeatedly, both by his personal general attorney, Charles W. Pierson, of New York City, and his local Massachusetts counsel, John M. Bullard, of New Bedford, that, so far as Massachusetts income taxes were concerned, it made no difference if he spent less or more than six months of the year in that state.

More eloquent than any other single fact in the case to show that Green did not acquire a Massachusetts

domicile is the action of the taxing authorities of the Commonwealth with respect to his income taxes.

According to the finding of the Special Master, Green became domiciled in Massachusetts in 1921. There was no secret about his manner of living or about when he came to and left that State or about what he did there. The newspapers there were full of stories about him and he was regarded as good copy by special writers as well as by the everyday reporters. He had a flare for publicity. The facts about his life were recorded in books and magazine articles. There was and could be no excuse for lack of knowledge on the part of the taxing authorities concerning him.

In 1928 the Commonwealth of Massachusetts undertook an investigation to determine whether or not that State was his domicile. It did not entrust so important a proceeding to a junior official or even to an associate executive. The Commissioner of Corporations and Taxation, Henry F. Long, personally took charge of it. Mr. Long is no novice in the field of taxation. He is an attorney at law and has held the office of Commissioner of Corporations and Taxation which he now holds, since 1920. He is a former president of the National Tax Association, a former president and the most active member of the New England Tax Officials Association and is regarded throughout the Nation as an expert on taxation. He knows the law of domicile. He knew also that if Green was domiciled in Massachusetts his income tax would represent a substantial annual increment to the Treasury and it was his duty to enforce the payment of income taxes by Green if he was so domiciled.

The investigation with respect to Green's domicile by the taxing authorities of Massachusetts reached its climax when, on November 27, 1928, Commissioner Long journeyed to Round Hills for a personal interview with him. He suggested to Green that he had information indicating that Green was subject to income taxation in Massachusetts and informed him that it was common knowledge that he was there a good portion of the year and that the people of Massachusetts looked upon him as one of them, and said that he was considering seriously holding him to be a resident of Massachusetts. Green responded with the hackneyed and much advertised statement that his legal residence was Texas, a statement which by the furthest stretch of the imagination could not have been unknown to the astute and experienced head of the taxing machinery of Massachusetts to be false.

We have the right to assume that Commissioner Long did not neglect his duty but that he made a thorough investigation of all of the facts and circumstances that might indicate a Massachusetts domicile. If he had concluded as the result of such investigation that Green was domiciled in Massachusetts, it was his duty under the law to take steps to levy assessments against him and to enforce the collection of the same. The Commissioner's inaction is ample evidence of his findings. He made no assessment against Green at any time and took no action of any kind looking to the enforcement of any income tax, despite the fact that a two year statutory limitation barred him from enforcing taxes for a longer period. No importance attaches to the mailing of a notice to file an income tax return to Green, which did not reach him during his lifetime

but was delivered to his financial representative subsequently to his death. The purpose of this seems obvious.

The sum and substance of the action taken by the taxing authorities of Massachusetts in regard to imposing an income tax against Green is a determination that he was not domiciled in the Commonwealth.

Exception is taken to the failure of the Special Master to find that it was Commissioner Long's duty to enforce the income tax law of Massachusetts (See Exception No. 37), and also to his failure to find that no assessment for income taxes was ever made against Green by that State (See Exception No. 38).

It is proper for the Court to give weight to the fact that Massachusetts did not challenge Green's claim of nonresidence or contest the issue when the 1928 investigation of his domicile was made.

Cooper's Administrator v. Commonwealth, 121 Va. 338.

The mere failure of Green to file an income tax return in Massachusetts is evidence of an intention not to be domiciled there.

Matter of Lydig, 191 App. Div. 117, *supra*.

Much stronger evidence of his intention is shown by the fact that he affirmatively denied being a resident there, and the taxing officials of the Commonwealth, after a complete investigation, determined that he was not a resident.

The Special Master, at page 42 of his Report, finds as a fact indicating a Massachusetts domicile that "In 1915, he had his yacht 'United States' taken out of the State to avoid taxes." The year 1915 was a typographical error and has been corrected by the Special Master. It should have been 1919. The greater error in this finding, which will have to be corrected by this Court, is the improper use of the fact it states to bolster up the case for Massachusetts. The manner in which the fact is used in the Report creates a wholly false impression. The taking of the yacht out of Massachusetts to avoid taxation thereon had nothing whatsoever to do with Green's being domiciled in Massachusetts. The taxes sought to be avoided were those that would have been levied against the yacht as tangible personal property within the State owned by a nonresident. If Green had been a resident of Massachusetts, the yacht would have been taxable there without regard to whether it happened to be physically within the State on the day of taxable status. This point is covered by Exception No. 56.

Another instance in which the Report of the Special Master is misleading and erroneous is at page 38, where the statement appears that "Mrs. Stafford, who had made her home with them in New York, lived at Round Hills each year from 1920 to 1927." If this statement were so phrased as to state that Mrs. Stafford spent portions or all of the summer with the Greens at Round Hills each of those years, it would not be objectionable. The trouble is that it conveys the erroneous impression that Mrs. Stafford made her home at Round Hills.

Her testimony on this point was as follows (Record, 5070):

"Q. Now, how long did you make your home at the Waldorf-Astoria Hotel with Colonel Green?
A. From the time, from May of '18 until '27.
Q. Yes. And I think you told me when I talked with you that wherever Colonel Green's home was your home was?
A. Yes."

Exception to the finding of the Special Master last referred to constitutes Exception No. 50.

Reference has been made to the giving up by Green, long prior to his death, of his memberships in Massachusetts social organizations. Further evidence of a lack of domiciliary intention by him toward Massachusetts is shown by the fact that he discontinued his contributions to the New Bedford Community Welfare Fund after 1928, although he had contributed for many years previously. This is covered by Exception No. 40.

The Special Master failed to find that Green's name was never on a jury list at South Dartmouth, Massachusetts, which is additional evidence that he was not domiciled there (See Exception No. 41).

Of prime importance on the question of Green's intention is the fact that subsequently to 1921, the year in which the Special Master found that he became domiciled in Massachusetts, he specifically denied on numerous occasions that he was a resident of that State (See Exception No. 42).

Disavowal of an intent to make a place where one actually resides during portions of the year his domicile is to be given weight in determining where the domicile is.

Givernaud v. Variel, 86 N. J. Eq. 80, affd., on opinion below, 87 N. J. Eq. 654.

The Record fails to justify the statement by the Special Master, at pages 41 and 42 of his Report, that all of Green's personal and intimate belongings remained at Round Hills until his death. Wherever he journeyed he carried with him a great many trunks containing his personal belongings (R. 21). All of his mother's letters to him, his most intimate tie to her, and the major portion of his stamp collection, which constituted his principal hobby, were kept in New York City until his death. Other of his belongings of a personal and intimate nature were kept both at Star Island and at Round Hills. (See Exception No. 55.)

The statement contained in the Report of the Special Master at page 42, to the effect that Green never openly acknowledged Round Hills as his legal residence, invariably giving as his reason that he wished to avoid paying taxes there, is improper and misleading. It implies that Green secretly acknowledged Round Hills as his legal residence, an implication that is in no way justified by the Record. Green never acknowledged any place other than Texas to be his legal residence. He always insisted that Massachusetts was not his legal residence and said that he would not make it his legal residence because of its tax laws and for other reasons. (See Exception No. 57).

The statement at page 34 of the Report of the Special Master, that there is nothing in the correspondence between Green and his attorney, Charles W. Pierson, of New York City, indicating that he ever regarded himself as a resident of New York, is subject to the same criticism as the statement referred to in the preceding paragraph. It would hardly be expected that Pierson, shrewd lawyer that he was, would write Green that his residence was in New York when he well knew that Green's claim was that he was a legal resident of Texas; much less would Green write Pierson to that effect. The statement unduly and improperly colors the findings to the prejudice of the Respondent, The State of New York. There was nothing in the correspondence between Green and Pierson indicating that he ever regarded himself as a resident of Massachusetts or Florida or any other state, except Texas (See Exception No. 66). The Special Master should have so found, if any finding at all on the subject were deemed appropriate.

Subject to similar criticism is the statement on page 34 of the Report of the Special Master that "In a sworn statement to the taxing officials of New York, he declared that he was not and never had been a resident of New York" (See Exception No. 67). It is incomprehensible that the Special Master should adopt such a reason for finding against a New York domicile when the Record teems with instances where Green declared, under oath and otherwise, that he was not a resident of Massachusetts, and particularly when the declaration was made to escape taxation in New York and was a part of an affidavit that contained obvious untruths. The sole purpose of the statement was to

create evidence in favor of the declarant and it is entitled to no weight. The Special Master's use of this declaration against New York and in favor of Massachusetts is on a par with his use against Florida and in favor of Massachusetts of a statement made by Green in testimony given in 1935 that he was a resident of Texas and a statement made by Green to the Tax Assessor of Dade County, Florida, that his residence was in another state (without specifying what state). (See Report, pp. 47-8.) The fact that Green claimed his residence to be in Texas must be as valid to disprove a Massachusetts domicile as to disprove a domicile in either New York or Florida.

At page 52 of his Report, the Special Master states that after 1921 Green's declarations that he had a legal residence in Texas were made to the taxing officials of New York, Massachusetts and Florida, for the purpose of escaping taxation in those jurisdictions. This statement is inaccurate as there is no evidence that he made any declarations to the New York taxing officials after 1921. The only statements the evidence shows that he made to New York taxing officials were those which he made in 1916. The statement also improperly colors the opinion as it implies that Green kept his legal residence in Texas until 1921 and that his statements that he had a legal residence in Texas were not false until after 1921. The difficulties inherent in reaching a conclusion that Green became domiciled in Massachusetts in 1921 are appreciated, but such an indirect method of attempting to substantiate the conclusion is not warranted.

In *Estate of Harkness*, 176 Cal. 537, *supra*, it was held that the fact that a person in "swearing off" his

personal property taxes in New York City, alleged that he was a resident of California did not establish that his residence was in that State and the further fact that he stated that he was temporarily sojourning in Kentucky did not prove that Kentucky was not his domicile.

The Special Master, at page 35 of his Report, finds that from 1918 to 1921 the development of the Round Hills property was Green's principal occupation. Nothing could be further from the fact. From 1918 to 1921 Green was engaged in the same activities in New York City that had occupied him since he came there in 1911. During each of those years he was in Massachusetts only three and a half months and spent nearly all of the remainder of the year in New York City. When he was at Round Hills and vicinity he made weekly trips to New York to attend to his business affairs. (See Exception No. 68.) The Special Master himself states (R., p. 29): "This period from 1911 to 1921 was the most active of Green's business career."

At page 36 of his Report, the Special Master finds that Green stated that if he survived his sister, Mrs. Wilks, he would have the entire ownership of the Round Hills property and, if she survived, she would own it as residuary devisee under his will executed in 1908. The purpose of this finding is not too clear, unless it be to circumvent and deprecate the clearly established fact that Green did not own the Round Hills house but only had an undivided one-half interest in it, which is wholly consonant with the use of it as an institution but inconsistent with its having been constructed by him primarily as a home. The Record does not support the finding (See Exception No. 69).

This case is extraordinary for the reason that neither Green's widow nor his sister were called as wit-

nesses. They are the two living persons who should know most about his life and his intention with regard to domicile. When the Special Master, at page 48 of his Report, states that Mrs. Green and Mrs. Wilks "have been able to give but little aid in the solution of this problem," he probably does not intend to infer that they might not have been able to aid if they had been called as witnesses. New York was not in position to call them as Mrs. Green had shown by her answer in this case and her position in the proceeding for the probate of her husband's will that she was pro-Texas (R. 48), and Mrs. Wilks is a party to this proceeding adverse to New York (R. 49). It will be noted that the Special Master in his Report, at page 49, sets forth that Mrs. Wilks in the New York probate proceeding denied that her brother was a resident of Texas, but made no reference to the fact that she there took the definite affirmative position that he was domiciled in New York before he was alleged to have become domiciled in Massachusetts. She is residuary legatee under her brother's will and a finding that he was domiciled in New York would have cost her nearly $2,000,000 more than if he was found to have been domiciled elsewhere, as personal income taxes to the amount of $920,827.35 have been assessed against Green as a resident of New York State, covering the period from 1919 up to the time of his death (See Exception No. 17), and the rates of the New York State estate tax are higher than those of any of the other states. Had Mrs. Wilks testified, she could have told what understanding, if any, she had with her brother in relation to Round Hills and could have cleared up many points that remain shrouded in doubt. The order of this Court referring the case to the Special Master appears to have been broad enough to have

warranted him in insisting upon the testimony of these witnesses. He was authorized "to take such evidence as may be introduced and such as he may deem it necessary to call for." Even if it found support in the Record, there would be no excuse for a finding that Green said Round Hills would be his if his sister predeceased him, when it was possible to call Mrs. Wilks and ascertain the true facts, particularly when the Record establishes so clearly that Green was somewhat akin to Gulliver as a romancer.

The following statement by the Court in *Commonwealth ex rel. Fortney v. Bobrafskie*, 329 Pa. 44, 47, a domicile case, is particularly appropriate here:

> "It is significant, however, that no member of his family—his wife and mother-in-law, who live in the ninth ward, on the one hand, and his mother and brother, who reside in the seventh, on the other—was called to testify for appellant. These were the persons most closely acquainted with the details of appellant's daily life."

An instance where the testimony of Mrs. Green would have been very helpful is in connection with the statement of the Special Master, at page 56 of his Report, that Mrs. Green looked forward to the time when she might be left alone and had selected a site and considered plans for a small cottage on the South Dartmouth estate, which were never carried out. Mrs. Green could have told whether or not there were any such plans but the Record leaves us uninformed. The Special Master's statement is speculative and prejudicial to New York. It has no place in the Report (See Exception No. 72).

It is elementary that the choice of a domicile made by the personal representative of a decedent, or by attorneys acting in behalf of the personal representa-

tive, or by one interested in the estate who would benefit from the choice, has no effect in determining domicile. The fact that Mrs. Wilks and her attorneys have selected Massachusetts cannot be given weight. This thought is accentuated when it is considered that Mrs. Wilks and her attorneys in the New York proceeding for the probate of Green's will took the definite position that he had become domiciled in New York, whereas in this proceeding they have avoided such a commitment. This may have been due to the fact that in the probate proceeding it was to their advantage to have Green domiciled in New York previous to taking up his alleged domicile in Massachusetts, whereas in the present proceeding they realized that it would not be possible to overcome the presumption in favor of the continuance of a New York domicile if that were conceded or established.

From the time Green moved to New York until the last three years of his life, when he was an involuntary exile from that State, no matter where he went he always returned to New York. The Special Master should have made a finding to that effect as it has an important ring upon the question of domicile (See Exception No. 18). It is proof of the *animus revertendi*. Opportunities to give up and abandon his New York domicile were plentiful. He never chose to do so.

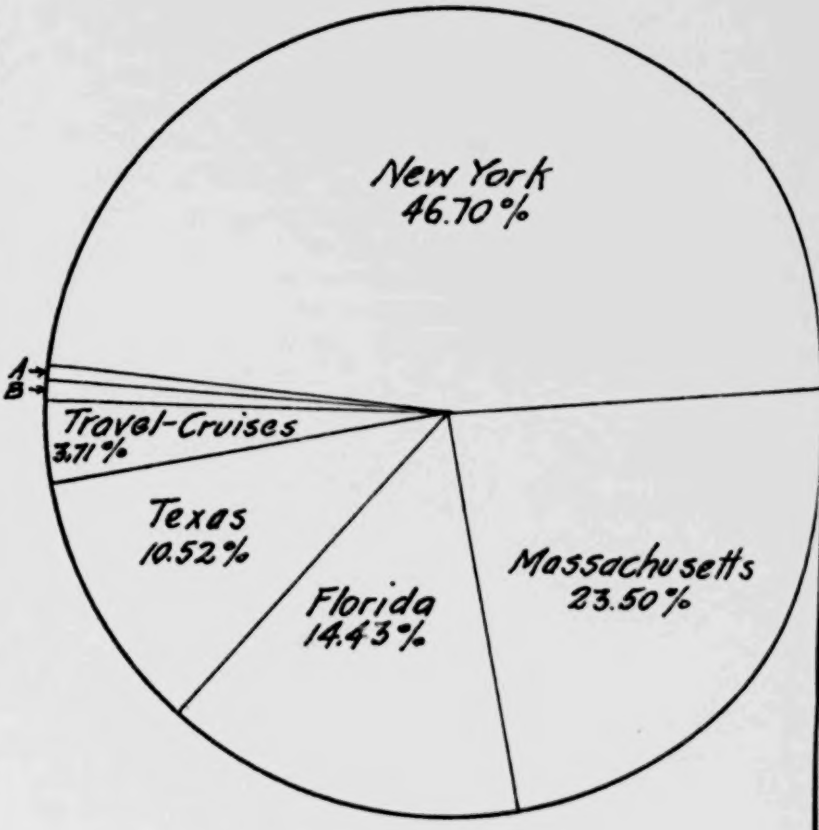
Summarizing briefly, Green came to New York in 1911 and spent all his time there until 1918, except for short visits to Texas and other points. In 1918 he began to spend his summers in Massachusetts but continued to spend most of the year in New York. The completion of the Round Hills house in 1921 brought about no change in his routine. Except for a visit to

Texas after his return to New York in that year, he remained in New York until July, 1922, when he went to Massachusetts again for the summer. Upon his return to New York in the fall of 1922, he again spent the winter in New York until, in the fore part of March, 1923, he was ordered by his personal and family physician, Dr. Pascal, to seek a warmer climate on account of his health. It is important to note that the physician's advice was that it would be necessary for him to spend his winters in the South or a warmer climate, not just the unexpired portion of the winter of 1923 (See Exception No. 43). Of the highest significance is the fact that after Green commenced his trips South his attitude toward Round Hills and the routine of his visits there did not change. It was still the summer home, staffed by summer help. After his first trip to Florida in 1923, he spent no more time at Round Hills than he had previously. If he had continued to spend the entire winter and spring in New York after 1923 there would probably never have been a question but that he continued to be domiciled in that State. Surely, it made no difference, so far as Massachusetts is concerned, that instead of spending his time in New York he divided it between New York and Florida.

46.70% of Green's time from January 1, 1910, to June 30, 1933, after which latter date he was compelled to remain outside the State, was spent in New York. This is almost double the amount of time he spent in Massachusetts, the percentage for that State being 23.50. Florida claimed 14.43% of his time, Texas 10.52% and the balance was spent in other places.

The time spent in the different States is graphically shown by the following diagram:

Period Jan. 1, 1910 to June 30, 1933.



A- North Carolina 0.41%
B- Doubtful 0.73%

In terms of days, Green's time between January 1, 1910, and June 30, 1933, was divided as follows:

New York	4008
Massachusetts	2017
Florida	1238
Texas	903
Scattering	416

After 1923, Green wintered in Florida on house boats until, in 1927, he moved into the new home he had built at Star Island, Miami Beach. From then on until his death he spent his winters in this home.

Judged by every criteria, the Star Island house was of the home type, as distinguished from the institution Green had erected at Round Hills. It had all the characteristics of a home. The premises were private and the public was bidden to stay off. The furnishings were sumptuous. Like the Round Hills house, Star Island could have been used for year round occupancy, but was never so used. Although the Special Master correctly indicated that Star Island was a winter home in the ordinary sense of the term when he said, at page 47 of his Report: "Everything he did indicated a seasonal vacation and relaxation from physical and mental effort," he failed to make such a finding. It was so regarded by Green and his friends and associates and was never intended to be his domicile. Exception No. 44 covers this point.

Upon all of the evidence, if a choice between two seasonal homes should become necessary in order to determine the domicile there should be no hesitancy in deciding in favor of Florida. The Special Master indicates this, despite his finding for Massachusetts, when

he says, at page 54 of his Report: "Doubtless those who have visited both Round Hills and Star Island would prefer to live at the latter place, where there is every convenience, almost perpetual sunshine and a homelike atmosphere."

Actually, neither Round Hills nor Star Island became the domicile because Green never abandoned the domicile he had established in New York. Proof of the *animus manendi* is lacking with respect to both the Massachusetts and the Florida residences.

Certain exceptions have been taken to the findings and statements of the Special Master in regard to the Star Island residence and Green's activities there.

At page 45 of his Report is a finding that the Star Island house contained no library, no framed pictures or mementoes of his ancestors or articles of a sentimental nature or personal associations as at Round Hills. On the contrary, there was a library at Star Island and there were pictures and other articles of a sentimental nature and of personal associations (See Exception No. 73). A whaling ship and mementoes of the whaling industry would have been out of place in the waters of Biscayne Bay.

At page 47 of his Report, the Special Master finds that Green never conducted in Florida any of the activities or experiments which occupied him in Texas and Massachusetts. This finding is not supported by the evidence. As has been pointed out, the Star Island place was of an entirely different character than Round Hills and Green's health had changed ma-

terially when he commenced his activities at Star Island from what it had been when he was in Texas, New York and Massachusetts (See Exception No. 74). In Florida, he was interested in radio, moving pictures, aeronautics, yachting, television, stamps, numismatics, jewels, jig saw puzzles, etc.

The finding of the Special Master, at page 55 of his Report, that Green's personal counsel, Charles W. Pierson, in 1931 and again in 1933, advised him to formally adopt Florida as his legal residence is wholly unsupported by the evidence. All that Pierson said to him on the subject was that, if Texas should pass an income tax law, he should consider changing his legal residence to Florida. Texas never passed an income tax law and Pierson never advised Green to adopt Florida as his legal residence (See Exception No. 75). Even if the finding were supported, it is difficult to see how it would prove either that Massachusetts was Green's domicile or that Florida was not. The Special Master concedes that Green's claim to a Texas domicile was specious—what difference would it have made if Pierson had advised him to give it up and Green had refused.

The evidence clearly establishes that during the latter years of his life, Green devoted his activities to building up Star Island while his interest in Round Hills declined, and the Special Master should have made a finding to that effect (See Exception No. 45). This was in accordance with Green's habits. His interests constantly shifted in respect to all of the things in which he was interested, including radio, photography, aviation, scientific research conducted by the

Massachusetts Institute of Technology, and the Round Hills plant in general.

Exception is taken to the statement on page 17 of the Report of the Special Master, which reads as follows:

> "The defendants all proceed upon the theory that what happened prior to the time when Green moved into his several places of abode is not material and only of historical interest and that the place where he had his principal, predominate habitation and permanent home at the time of his death was his domicile regardless of the past, * * *."

The Special Master suffered under a serious misapprehension as to the legal theory of the Respondent, The State of New York. New York's position is that what happened prior to the time Green acquired his summer home in Massachusetts and his winter home in Florida is of the highest importance in the determination of his domicile (See Exception No. 76). This will be fully developed in the argument which is to follow.

New York also excepts to the conclusion of the Special Master, at page 57 of his Report, that the domicile of Green at the time of his death June 8th, 1936, in fact and in law, was in the Commonwealth of Massachusetts, claiming that he was domiciled in the State of New York at the time of his death (See Exception No. 77).

Discussion of legal principles which fix Green's domicile in the State of New York at the time of his death.

The Special Master in his Report sets forth two theories of the law of domicile, viz.,

1. The earlier home theory, which is to the effect that where a person has two or more homes his domicile is in the earlier home unless another is clearly proven to be the principal home, *animo et facto*, and

2. The principal home theory under which the domicile of a person having more than one home is determined by ascertaining which is the principal predominant habitation and permanent home regardless of the past.

The Special Master states that he had not adopted either of these theories to the exclusion of the other, but has followed both and obtains the result that the domicile was in Massachusetts (R. 18).

It is the contention of the Respondent, The State of New York, that the earlier home theory is the correct theory to be followed in the determination of Green's domicile at the time of his death and that under this theory his domicile was in New York, not Massachusetts.

There is a sharp division of judicial opinion with respect to the two theories of domicile above referred to. The overwhelming weight of authority in the older cases favors the earlier home theory. The principal home theory is of recent development, the leading case favoring it being the decision by the Supreme Court of Pennsylvania in *Matter of Dorrance*, 309 Pa. 151. The authority of the Pennsylvania decision is

seriously impaired by the fact that the New Jersey courts, in the same case, applied the earlier home theory and reached the conclusion that Dorrance was domiciled in New Jersey, despite the fact that the Pennsylvania court, under the principal home theory, had found his domicile to be in that State, *In re* ~~of~~ Dorrance, 115 N. J. Eq. 268, *supra*, affd. 13 N. J. Mis. Rep. 168, affd. 116 N. J. L. 362.

The conflict between the two theories is made clear by contrasting the opinion of the Pennsylvania court in the *Dorrance* case with the opinion of Surrogate Foley of New York County in the *Henry C. Frick* case (*Matter of Frick*, 116 Misc. 488, *supra*). Although the Surrogate's Court of New York County is not an appellate court and the decision in the *Frick* case was not appealed, counsel do not hesitate to cite that case, in view of the fact that it is well recognized that Surrogate Foley is not only an outstanding jurist but, because of the many domicile cases coming before his court, is a specialist in that field.

In the *Frick* case, to the facts of which reference has heretofore been made, there was no doubt at all but that under the principal home theory Frick's domicile was in New York where he had occupied the Vanderbilt house on Fifth Avenue from 1905 until 1914, when he moved into a new mansion which he had erected for himself at Seventieth Street and Fifth Avenue. Judged by all of the standards the Special Master has applied in reaching his determination that Massachusetts was the domicile of Green, New York was Frick's domicile. Like Green, Frick was a nomad and divided his time between Pittsburgh, Philadelphia, New York, Pride's

Crossing and various summer and winter resorts. The time he spent in New York continued to increase from year to year, and he lived in New York for the greater part of many years prior to his death. He maintained an office for all his business activities in Pittsburgh and his large investments were managed there. He made only occasional visits to Pittsburgh. Surrogate Foley gave no consideration to the principal home theory but decided that Frick was domiciled in Pittsburgh at the time of his death because there had never been a union of residence and intention that would have effected a change of his domicile from Pittsburgh to New York. In other words, he held that Frick never abandoned his Pennsylvania domicile. He said (pp. 492-3):

> "To effect a change of domicile there must not only be a change of residence, but an intention to abandon the former domicile and acquire another as the sole domicile. Intention only will not do it, but the two *(animus et factum)* taken together do constitute a change of domicile. *Dupuy v. Wurtz, supra.* See, also, Gleason & Otis Inheritance Taxation, 214; *Matter of Lydig,* 191 App. Div. 117.
>
> "Domicile may exist without actual residence, but it can never exist without intention. *United States Trust Co. v. Hart,* 150 App. Div. 413, 417, citing *de Meli v. de Meli,* 120 N. Y. 485. Nor is long continued absence from the domicile an indication of abandonment so long as the intention to return exists. Length of residence elsewhere does not effect a change. *Matter of Blumenthal,* 101 Misc. Rep. 83; affd., without opinion, 186 App. Div. 944; *Curtis v. Curtis,* 185 App. Div. 391; *Matter of Harkness,* 183 *id.* 396; *Matter of Mesa y Hernandez,* 172 *id.* 467; *People v. Platt,* 117 N. Y. 159; *Matter of Chadwick,* 109 Misc. Rep. 696. Here proof of Mr. Frick's intention to reside perma-

nently in New York is utterly lacking. His home in Pittsburgh was maintained by a staff of servants up to the time of his death. The establishment of a separate dwelling in another state, and the relative size or magnificence of the various houses conducted by Mr. Frick are not tests of his change of domicile. If so, the establishment of a summer residence in Massachusetts in 1902, antedating the acquisition of his first New York residence, would have effected a change of domicile from Pennsylvania to Massachusetts. The maintenance of each of the independent dwellings in New York City and Pride's Crossing did not supplant, but paralleled the continuation of his domicile at Pittsburgh."

(A superficial reading of the foregoing quotation might lead to the impression that the case is authority for the proposition that Green remained domiciled in Texas until his death because he never voted elsewhere and always declared his intention to retain his domicile there, but this would overlook the fact that Frick continued to have a home in Pittsburgh whereas Green gave up his home in Texas in 1911 and never thereafter had a home of any character in that State. Green, by his actions, indicated his intention to change his domicile to New York. After the change was effected, his claim to Texas domicile was a sham.)

In the *Dorrance* case, the decedent had been domiciled at Cinnaminson, New Jersey, for many years prior to 1925, at which place his business of making soup was centered. In 1925 he purchased a house at Radnor, Pennsylvania, outside of Philadelphia, and caused it to be made into an elaborate residence, much larger, more expensive and pretentious than the old home at Cinnaminson. After the Radnor residence

was acquired, Dorrance occupied it by far the greatest part of the time, although he made European trips and took summer vacations. His subsequent occupancies of the Cinnaminson residence were comparatively few and of short duration. The Pennsylvania court concluded that Dorrance had evidenced his intention to abandon his New Jersey domicile and to acquire a new one in Pennsylvania. It seemed to recognize the fact that the *Frick* case was an authority *contra* and sought to belittle that case on the ground that it was a decision of a lower court.

The fallacy of the reasoning of the Pennsylvania court could not be better exposed than it was in the opinion in the *Dorrance* case, as reported in 115 N. J. Eq. 268, where it was said (pp. 275-6):

> "We have, in the present case, this situation: that Dr. Dorrance had a residence at Cinnaminson, New Jersey, which he occupied for many years and where he unquestionably was domiciled at and prior to 1925; the assertion (in the Pennsylvania proceeding and in this appeal) that he changed his domicile to Radnor, Pennsylvania, in 1925; the necessity that the truth of that assertion be proven by the weight of evidence; and the necessity of proving not merely that he then changed his residence in fact, but that he did so with the intention of abandoning his domicile in Cinnaminson and with the intention that the house at Radnor should thereafter be his permanent home.
>
> "The appellants (and the Pennsylvania court) rely on the facts that Dr. Dorrance purchased the Radnor house and improved it with the intention of using it as a residence or home for himself and his family; that it was far larger, more expensive and pretentious than the old home at Cinnaminson; that he thereafter—except for European trips

and summer vacations—occupied it by far the greatest part of the time (and his family even more so); that his subsequent occasions of occupancy of the Cinnaminson residence were comparatively few and of short duration (the occupancy by his family even fewer and shorter); that from and after November, 1925, the Radnor house was in fact the real residential home of himself and his family.

"All this must be conceded; it is fully established by the evidence. All this, however, goes only to the *fact* of residence; it is equally necessary to prove *intent*—to prove that in moving into and occupying the Radnor residence as a residential home, he did so with the intention of occupying it as a permanent home and abandoning the Cinnaminson residence as a home.

"The appellants (and the Pennsylvania court), assert that that intention is proven—that it is a necessary inference from the facts stated; but their argument goes but little beyond that mere assertion. Their argument is concentrated on the effort to show that from and after 1925 the house at Radnor was in fact the real and actual home of the Dorrances and the house at Cinnaminson a mere country house occasionally and briefly visited. Their contention is that the establishment and occupancy of the Radnor house as an actual home proves that there was an intention that it should be his permanent home and that there was no intention of returning to the Cinnaminson house as a home.

"This is an obvious *non sequitur*, and it disregards a great mass of evidence relevant and material on the question of intent, evidence which, in the judgment of this court, clearly establishes an intent quite the contrary, an intent not to abandon the Cinnaminson home, an intent that the Radnor house was to be a home only temporarily and that the Cinnaminson house was to be returned to as a home.

"It is true, as the appellants urge (and the Pennsylvania court stresses), that the intention required for the acquisition of a domicile is an intention to make a home in fact, and not an intention to acquire a domicile. *Am. Law Inst., Restatement, Conflict of Laws, section 21.* If Dr. Dorrance had intended to make his residence in Radnor his actual home for all practical purposes for the rest of his life and intended to live no more in Cinnaminson, he could not retain his legal domicile in Cinnaminson; in such case his intent or wish to retain a technical legal domicile in New Jersey while actually making, and intending to make, his permanent home in Pennsylvania, would be unavailing. *Dickinson v. Inhabitants of Brookline,* 181 Mass. 195. 'A person's wish to retain a domicile in one country will not enable him to retain it if in fact he resides with *animus manendi* in another.' *Dicey, Conflict of Laws,* 106.

"No matter how much he may wish or strive to avoid that legal consequence, a man's domicile will follow him to his new home, if he establishes himself in a new home and intends that new home to be his permanent home. But that legal result will not follow, no matter how completely he establishes himself in a new home, if he does not intend the new home to be his permanent home—if he intends that it shall not be his permanent home.

"The law is thoroughly well settled and unquestioned everywhere that a man's domicile once acquired, remains until a new domicile is acquired, and that a new domicile is not acquired by moving to another residence unless he has the intention to make his new home permanently in the new residence. *Cadwalader v. Howell, supra; Watkinson v. Watkinson,* 68 N. J. Eq. 632; 60 Atl. Rep. 931; *Givernaud v. Variel,* 86 N. J. Eq. 80; 97 Atl. Rep. 49; affirmed unanimously, *sub nom. Plahn v. Variel,* 87 N. J. Eq. 654; 103 Atl. Rep. 1054; *Williamson v. Osenton,* 232 U. S. 619, where the United States supreme court says:

'The essential fact that raises a change of abode to a change of domicile is the absence of any in-

> tention to live elsewhere (*Story Confl. L.* §43); or as Mr. Dicey puts it in his admirable book, "the absence of any present intention of not residing permanently or indefinitely in the new abode. *Conflict of Laws* (2d ed.), 111." " "

The affirmances of this case by the higher Courts were substantially on the opinion from which the above quotation was taken.

It would be difficult to find two theories of law with respect to which the line of cleavage would be more marked than the earlier home and principal home theories of domicile, and it is respectfully submitted that if these two theories conflict the long and well established earlier home theory must be given precedence.

Applying the earlier home theory to the case at bar, it is found, first, that Green abandoned his domicile in Texas and became domiciled in New York and, second, that as long as he lived he always retained his home in New York. The evidence is insufficient to show an intention ever to abandon the New York home or to overcome the presumption of law that the New York domicile continued.

The language of the New Jersey Court in the *Dorrance* case may be paraphrased so as to make it applicable to the alleged Massachusetts domicile of Green in this case, as follows:

> "We have, in the present case, this situation: that Colonel Green had a residence at New York, New York, which he occupied for many years and where he unquestionably was domiciled at and prior to 1921; the assertion that he changed his

> domicile to South Dartmouth, Massachusetts, in 1921; the necessity that the truth of that assertion be proved by the weight of evidence; and the necessity of proving not merely that he then changed his residence in fact, but that he did so with the intention of abandoning his domicile in New York and with the intention that the house at South Dartmouth should thereafter be his permanent home."

By a change of dates and names, a like paraphrasing will make the statement applicable to Green's alleged Florida domicile.

The facts favoring New Jersey in the *Dorrance* case were somewhat similar to, but not as strong as, the facts favoring New York in this case.

In the *Dorrance* opinion, 115 N. J. Eq. 268, it was said (p. 280):

> "He continuously maintained the Cinnaminson house as a residence, open and fully equipped for occupancy at all times, and with a full staff of servants (whereas the Radnor house was sometimes closed and without servants); and both he and his wife and children came and stayed there at times, even though infrequently and for periods of not long duration."

Green's New York residence was the only one that he possessed that was open and fully equipped for occupancy at all times.

Another case which illustrates the application of the earlier home theory of domicile, and which is closely in point on the facts with the case at bar, is *Reed's Will*, 48 Ore. 500, *supra*, in which it appeared that S.

G. Reed had been domiciled in Portland, Oregon. In the year 1891, because of the failure of his health, and at the instance and upon the advice of his physician, he went to California to spend the winter, hoping that the change would benefit him. His health did not improve and he returned to Oregon in the spring of 1892, after which he went to Europe to consult a specialist. He returned from Europe in the fall of 1892 and shortly after his return, in company with his wife, went to Pasadena, California, where the climate was considered better suited to his health and comfort than that of Portland. They stopped at a hotel in Pasadena for a while and then purchased residential property and removed their household effects and personal belongings from Portland to Pasadena. Reed's health grew worse and he died in Pasadena in 1895, his body being taken to Portland for burial. During his absence from Portland, Reed made no material change in his business affairs, retained his residence property and his lands, investments and securities there, kept his bank accounts and deposits there, and retained his office there in charge of an agent who attended to his business. He also retained his connection as director in several Oregon corporations, his position as a member of the Water Committee of Portland, and his fraternal affiliations in Portland. He never voted in California nor assumed any of the duties or obligations of its citizenship, and paid no taxes on personal property there, except such, perhaps, as he used for his immediate comfort and convenience. Aside from his bare residence in California, Portland was the center of his affairs and they remained unchanged as to his business connection and civic obligations and duties.

He expressed in his will a desire that his wife, to whom he gave his entire estate, should devote some portion of it for the permanent benefit of the City of Portland. Reed's will was probated in Oregon as that of a resident of that State, and no question was raised concerning his domicile. After settling her husband's estate in Portland, Mrs. Reed returned to California and occupied the old residence there for a time, but two or three years later built another dwelling at Pasadena on property purchased by her husband and on which he had contemplated building. She continued to reside in this new dwelling until the time of her death, in May, 1904, although making frequent trips to Portland meanwhile. She made no change in the management of the business or the property, real or personal, to which she succeeded, except to have her husband's name removed from the office door and hers placed thereon. She retained her church connection at Portland, and kept her office, agent, bank account and deposits there, except a small amount from time to time to meet her current expenses. She described herself in documents and in her will as of Portland. Her will made bequests to various Portland institutions and one to a Pasadena institution, the main bequest commemorating her husband. It was held that Mrs. Reed was domiciled at Portland at the time of her death. In the opinion, Chief Justice Bean said (pp. 505-6):

> "Now, the principal fact upon which the contestants rely to show a change of domicile was the removal of the Reeds from Portland to Pasadena in 1892, and the residence of Mr. Reed there until his death three years later and Mrs. Reed's residence thereafter until her death in 1904. But residence alone is not sufficient for the purpose.

> Residence and domicile are not interchangeable terms. Domicile embraces more than mere residence. Residence denotes a place of abode, whether temporary or permanent; while domicile denotes a fixed and permanent home, and need not be the actual place of abode. It does not depend upon mere naked residence, but 'is the legal, the juridical seat of every person—the seat where he is considered to be in the eyes of the law, for certain applications of the law, whether he be corporeally found there, or whether he be not found there:' Jacobs, Domicile, §63. This distinction is clearly recognized in the authorities."

Other pertinent excerpts from the opinion follow:

> "Domicile, therefore, is made up of residence and intention. Neither, standing alone, is sufficient for the purpose. Residence is not enough, except as it is co-joined with intent, which determines whether its character is permanent or temporary and clearly a mere intent cannot create a domicile." (pp. 504-5.)
>
> "We are not so much concerned at this time with the correct technical definition of domicile as we are with the law regulating a change of domicile when once acquired. It is shown by the evidence and admitted by the contestants that Mr. and Mrs. Reed were domiciled in Oregon from 1854 to 1892—a period of nearly 40 years—and this domicile is presumed to have continued until it is shown that a new one was established, in intent and in fact, by indicating and carrying into effect an intention to abandon the Oregon domicile, and to establish another in California. Every person is assumed by the law to have one domicile and one only. And when this is shown to exist, it is presumed to continue until not only another residence and place of abode are acquired, but until there is an intention manifested and carried into execution of abandoning the original domicile and acquiring another by actual residence; and the burden of proof is upon the party who asserts the change." (p. 505.)

"A change of domicile, therefore, involves a question of fact and intent. The fact is easily proved because it is shown by the mere transfer of the bodily presence from the old to the new place of abode, but the intent with which the change is made is to be determined from the character of the residence, its object and purpose, in connection with the other evidence in the case." (p. 509.)

"But a residence for mere pleasure or health is not regarded as of any great weight in determining the question of a change of domicile, for, in such case it is just as likely that the party intends to retain as to abandon his present domicile. The books abound in cases where absences for 20, 30 and even 40 years effect no change of domicile." (p. 510.)

Green's residence, both in Massachusetts and Florida, was for pleasure and health, not business, and was not of that permanent character which standing alone will in law constitute an indication of the intention to change the domicile.

The Special Master, at page 35 of his Report, finds that from 1921 to 1936, Green's principal concern was his health and he was constantly seeking relief from the ravages of disease by "following the sun" and indulging in hobbies and outdoor activities where the climate permitted. Without doubt, this is a correct statement. It indicates that Green had no fixed abode either in New England or the South, and points conclusively to the continuation of his domicile in New York.

Among the cases cited by the Special Master in support of his conclusion of a Massachusetts domicile is

Matter of Trowbridge, 266 N. Y. 283, *supra*. This case is readily distinguished as an authority. It does not involve the earlier home theory, for the reason that Trowbridge had no home in New York for a long period prior to his death. His only home was in Connecticut. He did own a house in New York City in which he had formerly resided, but the house had not been occupied as a residence for years. The windows were boarded up, telephone service had been discontinued, and the furnishings and silverware had been removed to the Connecticut home. Trowbridge told his friend and neighbor that he had closed his town house and never expected to go back to it. He and his family lived in Connecticut exclusively. Green's New York residence was ready for his occupancy at all times and equipped not only with hotel telephone service but with private unlisted telephone service.

The gist of the decision in the *Trowbridge* case is found in the following statement by Judge Loughran, at pages 291-2:

> "General concepts or definitions of domicile need not now engage us. If at a given time a man exclusively makes his home with his family in a complete domestic establishment, intending so to occupy it for the rest of his days, the place of that habitation is then his domicile, no matter what he may say to the contrary. (*Matter of Roberts*, 8 Paige, 519, 523, 524; *Peterson v. Chemical Bank*, 32 N. Y. 21; *Dupuy v. Wurtz*, 53 N. Y. 556, 566; *Matter of Harkness*, 183 App. Div. 396.) We have just that case here. Concededly, Mr. Trowbridge actually lived only in his Noroton house for years before his death."

After the Round Hills house was completed, Green at no time exclusively made his home with his family

in a complete domestic establishment. Before then he did exclusively make his home in New York City and, for that reason, became domiciled there, which domicile was never changed.

The proof of absence of *animo revertendi*, and of the presence of *animo manendi*, must be much stronger in a case where the old domicile is retained as a residence and it is alleged that a change of domicile has been effected than in a case where residence at the old domicile has been abandoned.

The evidence does not establish the adoption of either Massachusetts or Florida by Green as a domicile by any of the accepted tests, such as voting, taxpaying, declarations, etc. Therefore, the domicile must, as a matter of law, remain in New York City where it was established in 1911.

In *Chambers v. Prince*, 75 Fed. 176, it was said (p. 177):

> "A party may be a resident of a place, and yet not domiciled there, for, while he is resident there, still if he does not intend to make that his permanent place of abode, but has always the '*animo revertendi*,' there can be no doubt that the mere fact of his residing for the time being in a place does not establish a domicile at the place of residence. A man always retains his domicile if he leaves it '*animo revertendi*.' "

As was said in *Hayes v. Hayes*, 74 Ill. 312 (p. 316):

> "To effect a change of domicile there must be an actual abandonment of the first domicile, coupled with an intention not to return to it, and there must be a new domicile acquired by actual residence within another jurisdiction, coupled with the

> intention of making the last acquired residence a permanent home."

In *Boyd's Exor. v. Commonwealth*, 149 Ky. 764, it was said (pp. 766-7):

> "One may have several homes, but can have only one legal residence. In this age of commercial and social activity, it is not unusual for one, whose circumstances in life permit, to live in the far south in the winter, in the north in the summer and at some intermediate point, during the other seasons. Thus, he has three homes, only one of which can be his legal domicile; and this is not changed, but remains the same until he elects to surrender his legal domicile and adopt another, in its stead."

The fact that Green was nomadic in his tastes, as stated by the Special Master at page 53 of his Report, supports the New York domicile. He never settled down anywhere else after his New York domicile was acquired and, therefore, never lost it.

In order for a person to acquire a new domicile both *factum* and *animus* must concur.

The principle just stated is illustrated by the opinion of this Court in *Mitchell v. United States*, 21 Wall. 350, *supra*.

Jacobs on Domicil, §136, states:

> "Residence of itself, although decisive of the *factum* necessary for a change of domicil, is decisive of nothing further, and even when long continued, although *per se* evidence of intention, will not supply its place. Residence is of little value if not united to intention, and is nothing if contradicted by it. Intention must concur with fact, and must clearly appear. On the one hand the shortest

residence is sufficient if the requisite *animus* be present, and on the other the longest will not suffice if it be absent."

In *Loveland on Bankruptcy*, 3d ed., 516, the rule is thus stated:

"The domicile of a person may be changed. To constitute a new domicile two things are indispensable: *first*, residence in a new locality, and, *second*, the intention to remain there. The change can not be made except *facto et animo*. Both are alike necessary. Mere absence from a fixed home, however long continued, can not work the change. There must be *animus* to change the prior domicile for another. Until the new one is acquired the old one remains."

In the leading case of *Dupuy v. Wurtz*, 53 N. Y. 556, it was said (p. 561):

"To effect a change of domicil for the purpose of succession there must be not only a change of residence, but an intention to abandon the former domicil, and acquire another as the sole domicil. There must be both residence in the alleged adopted domicil and intention to adopt such place of residence as the sole domicil. Residence alone has no effect *per se*, though it may be most important, as a ground from which to infer intention. Length of residence will not alone effect the change. Intention alone will not do it, but the two taken together do constitute a change of domicil."

In *Jopp v. Wood*, 4 De G., J. & S. 616, Lord Justice Turner said (pp. 621-2):

"But nothing is better settled with reference to the law of domicil than that the domicil can be changed only *animo et facto*, and although residence may be decisive as to the *factum*, it cannot, when looked at with reference to the *animus*, be regarded otherwise than as an equivocal act. The

mere fact of a man residing in a place different from that in which he has been before domiciled, even although his residence there may be long and continuous, does not of necessity shew that he has elected that place as his permanent and abiding home. He may have taken up and continued his residence there for some special purpose, or he may have elected to make the place his temporary home. But domicil, although in some of the cases spoken of as 'home,' imports an abiding and permanent home, and not a mere temporary one. * * *

"In considering cases of this description it must be borne in mind that the acquisition of a new domicil involves an abandonment of the previous domicile."

In *Miller v. Brinton,* 294 Ill. 177, it was said (p. 186):

"To effect a change of domicile it must be abandoned without any intention to return to it and a new domicile acquired in another jurisdiction with the intention of making it a permanent home."

In *Bruner v. Bunting,* 15 Va. Law Reg. 514, *supra,* it was said (p. 517):

"In Lindsay v. Murphy, 76 Va. 428, Judge Burks, quoting with approval from a previous opinion of our Supreme Court written by him, said:

" 'Residence, with no present intention of removal, constitutes domicile. Mere change of place is not change of domicile. Mere absence from a fixed home, however long continued, cannot work the change. There must be the *animus* to change the prior domicile for another. To constitute a new domicile two things must concur—first, residence in the new locality; second, the intention to remain there. Until the new domicile is acquired, the old one remains; and whenever a change of

domicile is alleged, the burden rests upon the party alleging it. These principles are said to be axiomatic.'

"In a comprehensive note to Berry v. Wilcox, 48 Am. St. Rep. 711, the annotator shows by a strong array of authorities too numerous to be repeated here, that every person must for all purposes have a legal residence or domicile somewhere; that he can have but one; that a domicile once acquired continues to exist until another is acquired elsewhere; that to effect a change of domicile there must be an actual abandonment of the former one coupled with an intent not to return to it, and also a new domicile acquired at another place, which can only be done by the union of intent and personal presence; that mere change of dwelling place, however long continued, does not of itself constitute change of domicile; and that the burden of proving the abandonment of the old and the acquirement of the new is upon the party making the charge. (See also to the same general effect Pendleton v. Commonwealth, 110 Va. 229, decided at Staunton, Sept. 16, 1909, 65 S. E. 536.)

"Mr. Raleigh Minor, in his work on Conflict of Laws, at page 114 (Sec. 59), says:

" 'It must be observed that neither presence alone, nor intention alone will suffice to create a domicile of choice. Both must concur, and at the very moment they do concur the domicile is created. As it is sometimes expressed the *factum* (presence) and the *animus* (intention) must unite. And thereafter no change of locality alone (There being no change of intent), or, *vice versa*, no change of intention (there being no change of locality) will effect an alteration of the domicile of choice, which remains where it was, until the *factum* and the *animus* again unite.' "

In *Matter of Lyon*, 117 Misc. 189, affd. 200 App. Div. 918, the decedent owned houses in Greenwich, Connecticut, and Port Chester, New York. He actually

lived in Port Chester for twenty years prior to his death, leaving his Greenwich house in charge of a caretaker, but at all times claimed to be domiciled in Greenwich. It was held that he was domiciled in Greenwich at the time of his death. The difference between this case and the Trowbridge case lies in the fact that Lyon's Greenwich house was maintained as a residence in charge of a caretaker, whereas Trowbridge's New York house was abandoned as a residence.

In the opinion in the *Lyon* case reported at 117 Misc. 189, it was said (pp. 200-201):

> "Residence means living in a particular locality, but domicile means living in that locality *with intent* to make it a fixed and permanent home. In order to acquire a new domicile, there must be a *union of residence and intention.* Residence without intention, or intention without residence, is of no avail, etc. *Matter of Roberts*, 8 Paige, 519; *Cruger v. Phelps*, 21 Misc. Rep. 252, 261; 19 C. J. 393; *Duke v. Duke*, 70 N. J. Eq. 135; *Penfield v. Chesapeake R. Co.*, 134 U. S. 351, 357.
>
> "Residence and intention, *animus et factum*, go hand in hand. They must be both present to create the change of domicile. An intention to abandon the former domicile must appear. Either residence alone, or intent alone, is not sufficient. Gleason & Otis Inheritance Tax, p. 214; *Matter of Lydig*, 191 App. Div. 117; *Matter of James*, 221 N. Y. 242, 256; *Matter of Frick*, 116 Misc. Rep. 488; 19 C. J. 423, n. 39; *Plant v. Harrison*, 36 Misc. Rep. 649; *Frost v. Bristbin*, 19 Wend. 11. The naked residence in itself amounts to nothing, unaccompanied with evidence of the *animus. Isham v. Gibbons*, 1 Bradf. 68, 89. Long continued absence from the domicile is not an indication of abondonment so long as the *intention* to return exists. The length of residence elsewhere does not affect the change. *Matter of Blumenthal*, 101 Misc.

Rep. 83; affd. without opinion, 186 App. Div. 944; *Curtis v. Curtis*, 185 *id.* 391; *Matter of Harkness*, 183 *id.* 396; *Matter of Mesa y Hernandez*, 172 *id.* 467; *People v. Platt*, 117 N. Y. 159; *Matter of Chadwick*, 109 Misc. Rep. 696; *Matter of Frick*, *supra*; *Aetna National Bank v. Kramer*, 142 App. Div. 144. Mr. Justice Jenks of the Appellate Division of the second department in *Webster v. Kellogg Co.*, 168 App. Div. 443, also restates these principles."

In *Caldwell v. Pollak*, 91 Ala. 353, *supra*, it was said (p. 357):

"A domicil once acquired is presumed to continue until a change, *facto et animo*, is shown. It is presumed to continue, until another is acquired by actual residence with the intention of abandoning the former one. And the burden of proof lies on the party who asserts the change."

In *Succession of Steers*, 47 La. Ann. 1551, it was said (p. 1554):

"To change from one domicile to another there must be an intention to abandon the former domicile. A residence merely is not sufficient, as this may be for special purposes, such as for health, for recreation, for commercial purposes. The nature of the residence may rebut the presumption of the *animo manendi*."

In *White v. Tennant*, 31 W. Va. 790, it was said (p. 792):

"Two things must concur to establish domicile,—the fact of residence, and the intention of remaining. These two must exist, or must have existed, in combination. There must have been an actual residence. The character of the residence is of no importance; and, if domicile has once existed, mere temporary absence will not destroy it, however long continued."

In *Jain v. Bossen*, 27 Colo. 423, it was said (pp. 425-6):

> "When one has acquired a domicile, he must abandon it before he can gain another. To effect such a change, there must be both act and intention; in other words, there must be a severance from the old place with the intention of uniting with the new one, and these must concur. *Kellogg v. Hickman*, 12 Colo. 256.
>
> "A mere change of residence is not sufficient to acquire a domicile elsewhere, unless it is intended to be permanent. In all such cases it is the intention which is to control, so that a mere temporary absence for a temporary purpose does not result in an abandonment of a domicile. *Kellogg v. Hickman, supra;* 10 Ency. of Law (2d ed.) 600."

In *De Bonneval v. De Bonneval*, 1 Curt. 856, it was said (pp. 863-4):

> "Another principle is, that the acquisition of a domicile does not simply depend upon the residence of the party; the fact of residence must be accompanied by an intention of permanently residing in the new domicile, and of abandoning the former; in other words, the change of domicile must be manifested, *animo et facto*, by the fact of residence and the intention to abandon."

The Record is replete with specific denials by Green of *animus manendi* with respect to Massachusetts, an example of which is his statement to W. C. Vander when Vander was hired to become chief engineer at Round Hills. This was in November, 1929. Vander asked him if he would not be living at Round Hills the year round some day. Green replied: "No; there are certain reasons why I will never live here all the time." (Rec. 7131-2.) The testimony of the witness

Vander is inaccurately digested at page 342 of the Digest.

Another example is the statement made by Green to Van der Putten, the decorator who furnished the Round Hills house, that he intended to use Round Hills for a summer home during his lifetime. The Special Master has failed to include in the Digest the testimony by this witness at pages 4338-9 of the Record, which reads:

> "Q. Did the Colonel state to you what he intended to use it for during his lifetime?
> "A. For a summer home."

Another example is the statement made by Green to Ardolino, the architectural sculptor, at the time the Round Hills house was being built. Green said he wanted the sculptural work made much bolder than it had been originally designed because the building was not intended for a residence, but was intended for an institution. This testimony is inaccurately digested at page 200 of the Digest. Ardolino's testimony was:

> "A Mr. Zinn introduced me to Colonel Green and Colonel Green, direct to me, told me that he wanted that work much more bolder than what it was because it was not intended for a residence but it was intended for an institution, so we kept on working and working until we made it bolder as he wished to have it." (Rec. 7800).

Another example is the statement made by Green to Harry Neyland that Round Hills was constructed for other purposes than a home and he was using it until he had developed it for a memorial which he had intended to build for his mother and his ancestors (D. 199-200).

Even if it appeared that Green's intention with respect to Round Hills was doubtful, it would be necessary to resolve the doubt in favor of his New York domicile.

> "An *animus* which is in doubt is not controlling in law."
>
> *Matter of Wise*, 84 Misc. 663, 666.

See also:

> *Fisk v. Chicago, Rock Island & Pacific R. R. Co.*, 53 Barb. 472.

Mere residence by Green in Massachusetts or Florida was insufficient to transfer the domicile there. The Special Master has stressed the amount of time spent by Green in Massachusetts and Florida as compared with the amount of time spent by him in New York. As has been pointed out, when a computation is made covering a period of years it is found that Green spent nearly twice as much time in New York as he did in Massachusetts and more than three times as much as he did in Florida. The last three years of his life cannot be used as a criterion, as during that period he was purposely staying outside of New York in order to avoid the service of legal process. In the year 1930, Green spent roughly six months in Florida as compared with four months in Massachusetts. In 1931, he spent approximately five months in each of those States. In 1932, he spent less than four months in Massachusetts and more than four months in Florida. In 1933, he spent more time in Massachusetts than in Florida. In 1934 and 1935, his time in these two States was about equal. During these years, there was certainly no preponderance of time spent in Massachu-

setts. He occupied his summer and winter residences for about the same length of time.

It was held in *Commonwealth v. Harkness' Admr.*, 197 Ky. 198, that the fact that a person having several residences spends only a small portion of his time at that which is his domicile is unimportant and does not indicate that the domicile is elsewhere.

In *First National Bank v. Hinton*, 123 La. 1018, *supra*, it was said (pp. 1024-5):

> "The question of domicile is one of intention as well as of fact, and where, as in this case, it appears that a domicile has been acquired in another state, the parties seeking to show that it has been changed to this state must overcome the legal presumption that it has not been changed by positive and satisfactory proof of the establishment of a domicile here as a matter of fact with the intention of remaining here and of abandoning the former domicile. Cole v. Lucas, 2 La. Ann. 950; Succession of Franklin, 7 La. Ann. 408; Hymen v. Schlenker, 44 La. Ann. 116, 10 South. 623; Succession of Simmons, 109 La. 1095, 34 South. 101; Marks v. Bank, 110 La. 666, 34 South. 725; Ballard v. Puleston, 113 La. 239, 36 South. 951. The most that can be said of the proof in this case is that it shows that Mr. Hinton provided his family with two places of residence, and that since 1903 they have spent more of their time at the one place than at the other. There is absolutely nothing to show that in so doing it was his intention to abandon the 'domicile' that he had acquired in Mississippi or in the legal acceptation of the term, to acquire 'a domicile' in Louisiana."

In *Petition of Oganesoff*, 20 F. (2d) 978, *supra*, it was said (p. 980):

"When a residence or domicile is once acquired, it continues until a new one takes its place. It is not lost merely by temporary absence, or temporary residence elsewhere, though that may be continued for a period of years."

In *White v. Stowell*, 229 Mass. 594, it was said (p. 597):

"The question of a person's domicil is mainly a question of fact; a domicil once acquired is not lost until a new one is obtained. Mere temporary absence does not change it, and personal presence in a place, even for a protracted period, does not of necessity fix the domicil in that place. While actual residence is a circumstance tending to establish the place of domicil at the place of residence, it is not conclusive."

In *Kreitz v. Behrensmeyer*, 125 Ill. 141, it was said (p. 194):

"We have frequently held, that when a party leaves his residence, or acquires a new one, it is the intention with which he does so that is to control. Hence the shortest absence, if at the time intended as a permanent abandonment, is sufficient, although the party may soon afterwards change his intention; while, on the other hand, an absence for months, or even years, if all the while intended as a mere temporary absence for some temporary purpose, to be followed by a resumption of the former residence, will not be an abandonment."

See also:

Gould v. Gould, 235 N. Y. 14;

United States Trust Co. v. Hart, 150 App. Div. 413;

Matter of Kane, 93 Misc. 406, *supra*.

The precedence of the earlier home theory of domicile is recognized by *Beale* in his work on Conflict of *Laws* when he says (pp. 190-1):

"The true criterion, therefore, for determining the domicil where there are two homes, seems to be the determination of the order of acquisition of the two homes. The one which having been first acquired became a domicil remains the domicil, in spite of the establishment of the new home; and the second home, therefore, cannot be a legal domicil so long as the first one remains an actual home.

"This appears to be the doctrine applied, though not always clearly expressed, in most of the cases; therefore where one has a home and domicil established, and thereafter acquires a new residence, still maintaining his old home, it is not material whether the new residence is or is not a home, if it does not become his principal home; for whether a residence merely or a home, the domicil continues to be where it was in the past.

"A common example of the existence of two actual homes is the case of a person who has at the same time a home in the country which he occupies during a part of the year and a home in the city which he occupies during the remainder of the year. It has been often urged in such a case that the only home at any one time is the one of these two places which for the time the person is occupying; that he carries his *lares* and *penates* with him, and sets them up for the time being in the residence which he is then occupying. The better view, however, would seem to be that the two residences may have at all times the characteristics of home. Looking only at the owner's relation to one of them, he has left it temporarily, intending to return to it; a state of affairs quite consistent with his maintaining his home there. Throughout the year his thoughts may turn to either residence as home. Even though he should speak and think of one of them more enthusiastically than the other, this is not necessarily a proof that he regards it

predominantly as his home. 'The country house, being the place of recreation, is generally the object of the more exuberant expressions of attachment.' Under these circumstances, since the person has acquired each of his residences as a home and has never given up either permanently as the place of his home, he must be regarded as still actually at home, as distinguished from legally domiciled, in both. It would follow that if we find at any time in the past a legal domicil in one of these homes, that domicil must still continue. Where there are two actual and equal homes, the earlier in point of time is the legal domicile."

The foregoing quotation is directly in point on the facts of this case. It was adopted in part by the Special Master, at pages 55-6 of his Report. It points out that the summer home is the place where a person ordinarily gives vent to his exuberancy. Manifestly, Green could not operate a radio broadcasting station, maintain a photographic studio, enshrine a whale ship, or establish an aviation field in New York City. The logical place for him to give play to his inclinations in those respects was at his summer home where he had plenty of room to operate and which he occupied during those portions of the year when the weather was propitious. Far from establishing that Round Hills was the domicile, these activities tend to show that it was his playground where he found relief for his pent-up feelings.

In *Brisenden v. Chamberlain*, 53 Fed. 307, it was said (p. 311):

"The essential distinction between 'residence' and 'domicile' is this: The first involves the intent to leave when the purpose for which he has taken up his abode ceases; the other has no such intent,

the abiding is *animo manendi*. One may seek a place for purposes of pleasure, of business, or of health. If his intent be to remain it becomes his domicile; if his intent be to leave as soon as his purpose is accomplished, it is residence. Perhaps the most satisfactory definition is that one is a resident of a place from which his departure is indefinite as to time, definite as to purpose; and for this purpose he has made the place his temporary home."

Whenever Green went to Round Hills, he went there with the definite intention of remaining only for a period of a few months and of leaving at the end of that period. The same is true with respect to Florida. New York was the only home he acquired with intention of remaining permanently or for an indefinite time, and he continued to maintain this home as long as he lived.

In *Kennan on Residence and Domicile*, it was said (p. 33):

"Domicile is a much broader term than residence. A man may have his domicile in one state and actually reside in another, or in a foreign country. If he has once had a residence in a particular place and removed to another, but with the intention of returning after a certain time, however long that may be, his domicile is at the former residence and his residence at the place of his temporary habitation."

In *Plymouth v. Kingston*, 289 Mass. 57, it was said (p. 60):

"Absence from an established domicil for a particular purpose does not change domicil if residence in a new location is not accompanied with a fixed purpose to remain there indefinitely and with an intention not to return to reside in the former

home which is abandoned, *Wilbraham v. Ludlow*, 99 Mass. 587."

In *Wagner v. Scurlock*, 166 Md. 284, it was said (pp. 292-3):

"When one takes up a new residence, in order to avail himself of the rights which such change of domicile confers, it must be not so much with the intention of there remaining, but of the abandonment of his former domicile as a place of residence, and 'excludes any definite intention to return to the place of the previous domicile. 19 *C. J.* 407; *In re. Titterington*, 130 Iowa, 356, 358, 106 N. W. 761; *Walker v. Walker*, 125 Md. 649, 665, 94 A. 346."

The length of residence in a given place is treated in *Greene v. Greene*, 11 Pick. 410, where it was said (p. 415):

"He resided there, it is true, during the larger portion of each year; but when there is a divided residence the length of residence in the one place, or the other, will not settle the question of domicile; but it must be determined by other circumstances."

In *City of Hartford v. Champion*, 58 Conn. 268, it was said (pp. 275-6):

"When once it is ascertained what is necessary to constitute one's domicil in any place, it is easy to point out what must be done in order to effect a change of that person's domicil to another place. All the conditions which are required to constitute the domicil in the given place must be transferred to the new place. When this is done the domicil is changed; and until this is done the domicil is not changed. The old one is not abandoned, the new one is not acquired. This, of course, excludes the existence of an intention to return to the former place; for the existence of an intention to return is

inconsistent with the idea that the former home is abandoned. *Clinton v. Westbrook,* 38 Conn., 12; *Sears v. Boston,* 1 Met., 250; *Greene v. Windham,* 13 Maine, 225; *Wilbraham v. Ludlow,* 99 Mass., 578. It was essential to the defendant's case that she should prove a residence in Springfield or in Suffield so permanent as to exclude the existence of an intention to make a domicil elsewhere, and so permanent as to exclude an existing intention to return to Hartford. If she had not done this she had not shown any domicil in either of those towns. If she had not done this she had not shown any abandonment of her domicil in Hartford, and her stay in Springfield or in Suffield was but a mere temporary sojourn there, and not a domicil at all."

In the case at bar, it is essential to Massachusetts' case to prove a residence in that State, or to Florida's case to prove a residence in that State, in either instance so permanent as to exclude the existence of an intention to make a domicile elsewhere and so permanent as to exclude an existing intention to return to New York. Unless this has been done, it has not been shown that Green was domiciled in either of those States, and no abandonment has been shown of the domicile in New York, his stays in Massachusetts and Florida being merely temporary sojourns there.

For the sake of argument, it may be conceded that Green had a potential domicile in either Massachusetts or Florida which could have blossomed into a domicile in fact if he had ever formed the requisite intention. If he had voted in Massachusetts, filed an income tax return there, removed his business affairs there, kept his principal bank accounts there, kept his securities and safe deposit vaults there, maintained his office there, declared his intention to be a resident there, run

for office there, or there had been a sufficient combination of these facts, he would have become domiciled there. If he had given like evidence of his intention to make Florida his domicile, he would have become domiciled there. The fact is that he never indicated his intention to become domiciled in either Massachusetts or Florida, and the domicile which he had acquired in New York persisted until he died.

A point has been made by the Special Master of the fact that Green expressed the hope that he should be at Round Hills when he died (R. 42). This expression was made in the year 1924. Evidently he changed his mind because in 1934 he told S. J. Tucker of West Palm Beach, Florida, formerly of Dallas, Texas, that Florida was his home and he expected to live there the rest of his days (D. 372). It is difficult to see how these conflicting casual statements can have any weight in determining Green's domicile.

In *Matter of Newcomb*, 192 N. Y. 238, *supra*, Mrs. Newcomb had expressed the desire to die in New York and be buried in Greenwood Cemetery, but her domicile at the time of her death was found to be in New Orleans, Louisiana.

Another case, the facts of which are very close to the facts of the case at bar, and which is strong authority for the proposition that Green died domiciled in New York is *Matter of Lydig*, 191 App. Div. 117, *supra*. The decedent, David Lydig, died October 24, 1917, at Lenox, Massachusetts, and was buried there He was born in New York City, May 19, 1841, where the families on both his father's and mother's sides had long been

prominent, and, during his entire life, he maintained a place of residence in New York City. He was conceded to have been domiciled in New York City until about 1900. From 1895 on, he occupied his New York dwelling for six or eight months during the year and spent the summer months at Lenox. In 1899, his wife erected and fully furnished a house at Lenox, costing $50,000. or $60,000. Thereafter, the New York house would be left in the possession of a caretaker, and the servants and household removed to Lenox, generally in the month of June, returning to New York about November first. In 1900, Lydig registered as a voter in Lenox and his name remained on the voting list there until his death. He voted there in 1912, but there was no record of prior or subsequent voting. From 1912 until his death, he was assessed for personal and poll taxes in Lenox. He paid no taxes on personal property in New York. The largest assessment against him for personal property at Lenox was $23,000., although he had a personal estate of over $300,000. In his will, executed in 1912, and a codicil, executed in 1913, he described himself as of Lenox, although both instruments were executed in New York City. He attended St. Mark's Church in New York City and was a member of its vestry. His clubs were New York City clubs. He kept his securities in New York City. All the real estate owned by him was in New York City, except an undivided interest in a parcel at Lenox. In his federal income tax returns filed in New York City for 1914 to 1917, inclusive, he described himself as residing in New York City. In 1917 he did not file an income tax return in Massachusetts, as required by a new law of that state. For the last 35 years of his life he was not engaged in business. The Court stated that

presumptively his New York domicile was retained and that the burden was upon Massachusetts, which had submitted itself to the jurisdiction of the New York courts, to show that such domicile was abandoned or changed. After reviewing the facts relied upon by Massachusetts, the Court say (p. 121):

> "These facts, taken together, tend to show a desire to have a domicile in Lenox but there must be more shown than desire and intent to change; there must be in fact a change of domicile."

The facts of the foregoing case were much stronger in favor of Massachusetts than are the facts of this case. The case shows the force of the presumption of the continuance of a domicile once established.

In re Pusey's Estate, 321 Pa. 248, it was said (p. 265):

> "It requires less evidence to prove the continuation of domicile than it does to establish a new domicile."

In *Matter of Harkness*, 183 App. Div. 396, the decedent, while domiciled in Greenwich, Connecticut, acquired a country estate in Kentucky, which in many respects resembled Green's country estate at Round Hills. He also had a winter home in California and a town house in New York City, the latter having been acquired subsequently to the Kentucky estate. Although it was held that Harkness eventually became domiciled in Kentucky, it was also held that his Greenwich domicile continued for several years after the Kentucky estate was acquired and until Greenwich was abandoned entirely as a residence.

In *Huntly v. Gaskell*, 1906 A. C. 56, *supra*, the decedent, Sir William Cunliffe Brooks, Baronet, was born in England, which was his domicile of origin. He had three residences, one at Manchester, where his business interests were, another in London, to which place he was called by virtue of his election to Parliament, and the third in Scotland. In his later years he gave up active participation in business at Manchester and spent most of his time in Scotland, where he had purchased a castle and estate. For the last thirty-one years of his life, his principal residence was at Glen Tana in Scotland, the time he spent in Manchester and London being only such as his parliamentary duties and business transactions required. During the last six years of his life his average residence in Manchester was thirteen days, in London forty-one days and at Glen Tana two hundred sixty-seven days. His domestic establishment was at Glen Tana and he built houses there for the families of some of his married servants. When he went to Manchester or London, he took such servants with him as seemed necessary for the occasion. The houses at those places were in charge of housekeepers and maids, but were kept ready for occupancy on a day's notice. He became extremely attached to Glen Tana and spent enormous sums of money there. In his later years his chief pleasure in life was in planning and superintending the construction of roads and the erection of buildings at Glen Tana. He had a bank account in Scotland for local purposes but his principal banking was done at Manchester. At his direction, he was buried at Glen Tana. Before his death, he had considered giving up his residences in England, but did not do so. In documents, he was described sometimes as of Glen Tana

and sometimes as of Manchester. He evidenced his desire to continue his English domicile and was advised by his attorney that it had not been changed. His family was at Glen Tana, his collection of furniture was there, and the family Bible and material correspondence were there.

In his opinion in this case, the Earl of Halsbury said (pp. 67-8):

> "* * * I should have thought that it was impossible to doubt that there were at least three residences which he had, about which it might have been equally said he made his home there. It does not follow that they were all three equally popular with him, or any one of three the main abiding place for the greater part of the year during which he lived in each of them in turn. But what is the inference to be derived from that? I should have thought that the obvious inference which anybody would draw would be that there was no intention to change his domicil. That he had three residences is true, but unless you can shew something else than the fact that a man of great wealth, who had three residences, preferred one rather than another, either in respect of sport at the earlier period of his career or in respect of the state of his health at a later part of his career clearly he found that Glen Tana agreed with him better and that the air was better, are you to infer, or is there any evidence from which you can infer, an intention to change his civil status? It seems to me that every part of his career points to the same conclusion. Being a very wealthy man, and doing whatever he liked to do, he might go to Antibes at one time with as much idea of change, in the sense of changing his status at Antibes, as at Glen Tana, but the real truth was that no change of any sort or kind is suggested by what he did. It is admitted that mere residence is in itself nothing. There may be continuous residence, or what I think has been appropriately

> suggested as being the most satisfactory word to use, 'settling' somewhere, which of course involves residence as part of it, and if it was suggested that a man had gone to settle at some particular place and had abandoned all other connection with all other country, I think that inference might be natural and just; but to suggest in the case of a man of great wealth, who is wandering from one place to another from time to time, although he may spend a larger part of his time in Scotland than elsewhere, that that of itself should be anything from which anybody could draw an inference that he meant to change his domicil, seems to me to be a very monstrous proposition."

The fact that the above case involved a question of domicile between England and Scotland is not sufficient to distinguish it. The relationship between these two British countries does not differ materially from the relationship which exists among the States of this country.

Cases holding that Green's absences from New York City for purposes of recreation and health did not have the effect of changing his domicile are numerous. The rule is stated in *Kennan on Residence and Domicile*, at page 259, as follows:

> "In general, changes of residence for consideration of health will not result in a change of domicile unless accompanied by a definite intention to abandon the former domicile and acquire a new one."

In *Dupuy v. Wurtz*, 53 N. Y. 556, *supra*, the decedent went to Europe in 1859 for the benefit of her health and remained there until she died, twelve years

later. Her physicians advised her throughout this period that she should not return to New York and in her latter years she became convinced that she could not return. Her dwelling house in New York City was closed up in 1859 and was not occupied until 1868, when she leased it, reserving one room for the storage of some of her effects. It was held that her New York domicile was never changed.

In *Walker v. Walker*, 1 Mo. App. 404, *supra*, it was said (p. 413):

> "There is a difference between a residence and a domicile, which, however, may not be capable of easy definition—that is to say, it may be difficult to define both terms in such manner as to escape criticism. But every one can see at least this distinction: A person domiciled here may, for the sake of his health, reside one or more years in some place the climate of which is supposed to be more favorable to his constitution. In such cases it would be harsh and unnatural to consider the person thus residing abroad to have forfeited his domicile here, or in any proper sense to have become a non-resident of Missouri, unless some intention, manifested by some act of abandoning his residence here, were shown. So long as a person previously domiciled and residing in Missouri does no act to indicate his intention to cease to be a resident of this State, and to remove elsewhere, much weight is due to the presumption that he continues to be a resident of Missouri, notwithstanding prolonged absences extending to the greater part of the year. If no such absences are shown, and no unequivocal act occur accompanied by a declaration of intention to change his residence, this presumption is not overcome."

In *Cruger v. Phelps*, 21 Misc. 252, the decedent spent many years in France because the climate there was

better suited to the health of his wife and daughter, but he was held not to have lost his domicile in New York City.

In *Brafman v. Brafman*, 144 Md. 413, *supra*, the decedent had been domiciled in Baltimore, Maryland, but for some years previous to his death spent the summer at Atlantic City and the winter in Georgia and Florida in order to benefit his health, although he spent short periods of time in Baltimore, where he lived at a small hotel or with relatives. His business interests were looked after in Baltimore by his brother and his securities and investments were principally kept in that city. He had an account in a Baltimore bank and other accounts in banks at Atlantic City and in the south. Decedent's declarations as to his residence were conflicting. It was held that the proof was insufficient to establish a change of domicile to Atlantic City, although he had married a few years prior to his death, and had lived at Atlantic City during the time he and his wife had cohabited.

See also:

Matter of Blythe, 166 Supp. 908;
Younger v. Spreckels, 12 Cal. App. 175, *supra*.

Conclusion.

A record of 9800 pages, 1592 exhibits (not 1484 as stated at page 6 of the Special Master's Report) and a Digest of 450 printed pages, all involving a great mass of detail and minutiae, should not confuse the issue. Stripped down to essentials, the facts stand out in bold relief.

Green abandoned his domicile in Texas in the year 1911.

When he abandoned his Texas domicile he acquired a new domicile in New York.

Although he subsequently acquired a summer residence in Massachusetts and a winter residence in Florida, he never became domiciled in either of those States *animo et facto.*

The law is well settled that a domicile once established continues until residence and intention unite to form a new one, and, as there was no such union of intention and residence, the New York domicile continued until Green's death.

POINT IV.

The exceptions filed on behalf of the respondent, The State of New York, should be sustained, the recommendation of the Special Master for a decree should be disapproved, and a decree should be entered that at the time of his death Edward Howland Robinson Green, in fact and in law, had his domicile within the State of New York.

Cost of Proceeding.

The order of this Court by which this proceeding was referred to the Special Master contains a provision that the allowance to him, the compensation paid to his

stenographic and clerical assistants, and the cost of printing his Report shall be charged against and be borne by the parties in such proportion as the Court may hereafter direct.

It is respectfully submitted that the allowance to the Special Master, the items of expense herein, and the entire cost of the proceeding should be assessed against the Respondent, Hetty Sylvia Ann Howland Green Wilks. If the estate of Edward H. R. Green, deceased, were a party to this proceeding, it should, as a matter of equity, be required to pay the allowance and expenses, as the decedent by his actions during his lifetime created the situation which made this proceeding necessary and his estate was materially increased through tax avoidance (R. 21). The estate is not a party, but Mrs. Wilks is the sole beneficiary under her brother's will and an assessment against her will have the same effect as if the assessment were made against the estate.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1938

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No. ~~11~~, ORIGINAL

THE STATE OF TEXAS,

Complainant,

v.

THE STATE OF FLORIDA, *et al.*,

Respondents.

BRIEF OF RESPONDENT WILKS.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1938

No. 11, ORIGINAL

THE STATE OF TEXAS,

Complainant,

v.

THE STATE OF FLORIDA, *et al.*,

Respondents.

BRIEF OF RESPONDENT WILKS.

Statement

This is an original action instituted by Texas against the State of Florida, the State of New York, the Commonwealth of Massachusetts, Mabel Harlow Green, and Hetty Sylvia Ann Howland Green Wilks. Complainant's motion for leave to file its Bill of Complaint was granted by order of this Court on March 15, 1937.

The Bill alleges a controversy between States within the original jurisdiction of this Court. It alleges that Green died on June 8, 1936, leaving an estate in excess of $40,000,000, most of which consisted of intangible property; that at the time of his death Green was domiciled in Texas and that a Texas statute imposed an inheritance tax upon his intangible property; that New York, Massachusetts and Florida each claimed that Green was domiciled within

its borders and claimed the right to collect an inheritance tax on the value of his intangible property; and, finally, that Green's estate was insufficient, after the payment of claims having priority, to pay the aggregate of the taxes claimed by the four States.

The relief sought by the Bill of Complaint is a judgment by this Court that Green died domiciled in Texas and not in Florida, New York or Massachusetts. The respondent States admit the allegations of the Bill of Complaint except that each State denies that Green was domiciled in the State of Texas at the date of his death, and each State by counterclaim or affirmative pleading asks a judgment that he was domiciled within *its* borders.

The Court appointed a Special Master, the Honorable JOHN S. FLANNERY of Washington, D. C., to make findings of fact, conclusions of law, and recommendations for a decree, subject to consideration, revision or approval by the Court. The Special Master found that Green was domiciled in the Commonwealth of Massachusetts at the time of his death, and submitted his report to the Court which ordered that exceptions thereto, if any, be filed on or before December 12, 1938, and ordered a hearing on said exceptions on February 6, 1939. The States of Texas, Florida and New York filed exceptions to the findings of fact and conclusions of law in the Master's Report. The Commonwealth of Massachusetts filed no exceptions. Respondent Wilks filed no exceptions and urges that the Master's findings and conclusion be confirmed by this Court.

Question Presented

Whether the determination by the Special Master that Green was domiciled in Massachusetts at the time of his death should be confirmed, or set aside as unsupported by the law or by the evidence in the case.

ARGUMENT

I. The Master was correct in his legal conclusion that the place where Green had his principal home at the time of his death is the place where the law fixes his domicile.

The fundamental philosophy and practical purpose of the legal conception of domicile was explained by Justice Holmes in *Williamson* v. *Osenton*, 232 U. S. 619 (1914), where he said at page 625:

> "The very meaning of domicil is the technically pre-eminent headquarters that every person is compelled to have in order that certain rights and duties that have been attached to it by the law may be determined."

And Justice Holmes has pointed out that in determining where to fix a man's domicile the law proceeds on the basis of "the dominant facts of where he actually lives" and not at all on the basis of where the man wants to have his domicile. In *National City Bank* v. *Hotchkiss*, 231 U. S. 50 (1913), he said at page 56, by way of argument:

> "For instance, apart from possible exceptions, a man cannot retain a domicil in one place when he has moved to another and intends to reside there for the rest of his life, by any wish, declaration or intent inconsistent with the dominant facts of where he actually lives and what he actually means to do."

He expressed the same thought in an earlier case where he pointed out that the intention that is pertinent in the determination of domicile is the intention to *have a home* and not the intention to *acquire a domicile*. *Dickinson* v. *Brookline*, 181 Mass. 195, 196, 63 N. E. 331 (1902).

See also:

Matter of Trowbridge, 266 N. Y. 283, 291, 194 N. E. 756, 759 (1935);
Gilbert v. *David*, 235 U. S. 561, 569-570, 35 S. Ct. 164 (1915);
Restatement, Conflict of Laws, § 19;
1 Beale, Conflict of Laws (1935), § 19.1.

In the language of the street, a man's domicile is at the place with which he is most intimately associated in the living of his life or, in a word, at his home. In the earlier cases the courts, far from using the language of the street, resorted to Latin. The rule was that a man's domicile is where the *factum* of physical presence coincides with the *animus manendi et non revertendi*. But whatever the language, the thought is the same. If a man has a home, that is his domicile. As is said in Section 12 of the Restatement of the Law of Conflict of Laws, "when a person has one home and only one home, his domicile is the place where his home is".

See also:

1 Beale, Conflict of Laws (1935), § 12.1;
Matter of Trowbridge, 266 N. Y. 283, 194 N. E. 756 (1935).

If A lives almost all the time with his family in a dwelling place where he has his personal and intimate possessions, where he does the things which are the main activities of his life, where he likes to be and where he intends to continue to live in the way in which he has been living—that is his home. Of course, something a great deal less than that may also be a home. Whether a dwelling place is or is not a home depends upon the extent of the intimacy of the man's association with it. (Restatement, § 13.)

Not every case is as simple as A's case. There are cases in which a man is more or less intimately associated with

two or more dwelling places. For instance, B, having lived in an apartment and worked in an office in New York City for many years and clearly having been domiciled there, then retires from business, buys a farm in Connecticut and thereafter divides his time between his New York City apartment and his Connecticut farm. There may be all sorts of variations of this general situation—variations in the physical characteristics of the two places, in the time spent in each of them, in the things kept and done, and in the persons present, in each place and in the man's attitude towards each of them. The situation may be such that it is correct to say that one is a dwelling place and the other is a home or that they are both homes. The courts have not always recognized the possibility that both may be *homes*. There has been an inclination to assume, as a matter of terminology at least, that a man can have only one "home" in the sense in which that word is used in the law of domicile. But if the facts are such that the man in the street would say that B has two homes, the courts should say so, too. The Restatement accepts the proposition that a man may have two homes and in Section 24 lays down the rule that then the domicile is fixed at the one which the man regards "as his principal home".

Beale explains the necessity for this rule in Volume I of his Conflict of Laws on page 186:

> "When a person has more than one residence, all such residences may be homes, or one or more of them, or none of them. No residence which is not a home can be a domicil, as has been seen, unless it was once a home and has ceased to be such, and no other home has been acquired. On the other hand, if more than one residence is a home, only one can be a domicil. A principle must therefore exist by which a domicil can be determined in the case of plural residences or homes."

On page 191, Beale says:

"When a man has two homes, and is domiciled in the earlier, he may by a mere change of attitude toward his later home come to have a principal home and therefore a domicil there.

"This change of feeling by which what was formerly one of two equal homes becomes a predominant home may be exhibited in various ways: by a change in the manner of life, as from life adapted to the city to that of a country gentleman; by establishing the family principally in one place rather than another; or in any other way of showing a distinct preference for the life of one home."

See:

Agassiz v. *Trefry*, 260 Fed. 226 (D. C. Mass., 1919);

Thayer v. *Boston*, 124 Mass. 32 (1876);

Matter of Lydig, 191 (N. Y.) App. Div. 117, 180 N. Y. S. 843 (1st Dept., 1920);

Matter of Harkness, 183 (N. Y.) App. Div. 396, 398, 170 N. Y. S. 1024 (1st Dept., 1918).

There is nothing novel in saying that a man's domicile is where his principal home is. It is merely an application of the general rule that a man's domicile is where his home is, to the case of a man who has *two* homes. An essential part of Story's definition of domicile laid down in 1840 was that a man's domicile is where his "principal establishment" is. The fixing of domicile at the principal home is nothing more nor less than the fixing of the domicile at the place which is the "actual headquarters" of the man's life, which is Justice Holmes' definition of domicile. A man may have *quarters* in various places, but he has only one *headquarters*.

It is obvious that there are many cases in which a man, particularly if he is wealthy, so lives his life that he has seasonal homes. The city home in winter and the country home in summer furnish the best example. Each is a home because it is a dwelling place where the man keeps his personal belongings, lives with his family, engages in the important activities of his life and intends to continue indefinitely to live and engage in those activities. The geographical division of the year has no more significance than the geographical division of the day. When a man spends the daylight hours working in an office in New York and the night at home with his family in Connecticut, the law fixes his domicile in Connecticut because that is the place with which he is more intimately associated. It has never been suggested that the law ought to say that he has no domicile in either place. When a man spends the winter in New York and the summer in Connecticut, it becomes necessary for the law to determine which of the two homes is the one with which he is more intimately associated. But there is no room for the suggestion that the man does not make his home, or that the law will not fix his domicile, in *either* place.

The search always is for the place with which the man is most intimately associated. It makes no difference whether a court calls that place the man's "home" or his "real home" or his "principal home" or his "preeminent headquarters", all of which are words used by the authorities. The important thing is that every court fixes the man's domicile at the place with which it finds him to be most intimately associated.

It seems clear that the proper technique in determining which of two homes is the *principal* home is to determine which of the homes has the elements of home in the

greater degree. The elements of home are enumerated in Section 13 of the Restatement of Conflict of Laws and may be summarized as follows: A physically appropriate dwelling place; a reasonable amount of time spent there; the things which constitute the man's principal activities done there; the persons and things intimate to him customarily present there; an attitude of intimacy towards the place and an intent, when absent, to return there.

When the question is whether a man has a home in a given place, that question is answered by a consideration of the extent to which the elements referred to above exist or do not exist with respect to that place. Therefore, when the question is which of *several* homes is the principal home, it is clear that the proper way to find the answer is to consider the extent to which each of these elements exists or fails to exist with respect to each of the homes. The home with respect to which these elements exist in the greatest degree is the principal home.

There is what the Restatement calls an "unusual" situation in which a man has two homes "both equal in degree". In other words, the intimacy of the association with each of the homes is equal. In that situation the law fixes the man's domicile in the home first acquired. (Restatement, § 24.)

There is one more point which we should like to mention. In some of the cases there are statements to the effect that a domicile once acquired continues until it has been "abandoned". These references to "abandonment" lead to confusion because it is not always clear whether the reference is to the abandonment of a home or of a domicile or to a physical or a psychological abandonment. We think that the Restatement has made a real contribution to the law of domicile in emphasizing that the inquiry is not whether there has been an *abandonment of a former home or domi-*

cile, but whether there has been *the acquisition of a new home.*

Thus, paragraph (4) of Section 15 of the Restatement of Conflict of Laws reads as follows:

> "(4) A person can acquire a domicil of choice only in one of three ways:
>
> (a) having no home, he acquires a home in a place other than his former domicil;
>
> (b) having a home in one place, he gives it up as such and acquires a new home in another place;
>
> (c) having two homes, he comes to regard the one of them not previously his domicil as his principal home."

The courts recognize the soundness of the approach whereby the question of "abandonment" of a former home is not considered material and the question whether a principal home has been established elsewhere is deemed controlling. In *In re Dorrance's Estate*, 309 Pa. 151, 163 A. 303 (1932), the courts referred to an "intention on the part of the persons involved to change their true home, or to make a new residence their principal establishment and 'technically preeminent headquarters'." The Court went on to say at page 310:

> "It is argued by appellees that, before a new domicile of choice can be acquired, there must be proof of the abandonment of the old one. In our opinion, this contention is unsound, for the intention to make one's home in a new place necessarily includes the abandonment of the former home."

The Court then quoted from *Ford* v. *Peck*, 116 Kan. 74, 76; 225 Pac. 1054, 1055 (1924) as follows:

> "'Sometimes the animus is treated as involving two separate intentions, one to abandon the old location,

> and one to abide in the new. *If the last intention be formed, it necessarily includes the other.'* * * *,,
> (Italics the Court's.)

In *Atwood* v. *Atwood* (Mass.), 8 N. E. (2d) 916, 918 (1937), the Court said:

> "The intention which is significant in effecting a change of domicil is the intention to acquire a new home rather than an intention with reference to an old home."

As we understand the briefs, Massachusetts and Florida precisely concur in our statement of what the law is. Texas dissents to the extent that it claims that the law permits a man to retain a *domicile* solely by virtue of an intention to do so. This claim is unsound. The law permits a man to retain a domicile by virtue of intention, only when the intention is an intention *to return and make a home there* and not merely an intention *to retain a "legal residence" or a domicile there.*

New York states at page 105 of its brief that the correct rule of law is that "where a person has two or more homes his domicile is in the earlier home unless another is clearly proven to be the principal home, *animo et facto.*" This is precisely the rule of law upon which we, as well as Massachusetts and Florida, rely. But, as the Master found and as we shall redemonstrate, the application of it fixes Green's domicile in *Massachusetts*—not in New York. The New York brief apparently recognizes this, for in the pages which follow it attempts—but fails—to find authority for the proposition that a new home cannot become the principal home and the domicile so long as there remains *something* in the way of a dwelling place at the former domicile. Thus, at page 112, the brief claims that, assuming that New York was Green's domicile prior to

1921, it remained his domicile throughout, because he retained a dwelling place there until his death. This, of course, amounts to a complete repudiation of the whole doctrine of principal home, because it makes the earlier home remain the domicile no matter how subordinate, subservient and even insignificant it may have become.

The New York conception of the law is a product of necessity. In an attempt to bolster it the brief has a great deal to say about the presumption that when a man has once acquired a domicile in a particular place that place continues to be his domicile. This presumption is just like all other presumptions and merely states a legal conclusion arrived at in the absence of any facts upon the basis of which some other conclusion would be shown to be the correct one. Just as soon as other facts appear which tend to show the acquisition of a domicile in some other place, then the presumption disappears. In view of the mass of facts presented in the record before this Court this is not a case for reliance upon presumptions.

We think that the question whether Green had a home in New York before he settled at Round Hills is a purely academic question. If prior to July, 1921, Green had no home in New York, then the home which he established at Round Hills became his *only* home; if prior to July, 1921, Green did have a home in New York, then the home which he established at Round Hills became his *principal* home. We think, however, that the Master was right in his finding that "There is no sufficient evidence to show that Green ever intended to make New York his permanent home." (M. R. 54.) We think that during the years that Green was in New York he had a definite intention that when, upon the termination of his mother's life or of her need for his presence, he should be free he would then establish his home outside of New York—possibly in

Texas, probably somewhere else. If so, New York never became a home.

So much for the law. Applied to this case, it leads to the conclusion that *the only question of fact* in the case is whether Round Hills was Green's principal home at the time of his death.

II. The Master was correct in his ultimate finding that Round Hills, Massachusetts was Green's principal home at the time of his death.

The Special Master, who saw and heard each witness and studied the exhibits with a conscientious industry of which his Digest is a record, found that in July, 1921, Round Hills became Green's *only* home and that after the acquisition of the Florida home, Round Hills became his *principal* home and Star Island his *subordinate* home. He found that, at least after the acquisition of these two homes, the apartmental dwelling place in New York City became only a stopping off place for Green as he went back and forth between Massachusetts and Florida (M. R. 54). He further found that, at least after 1921, Green had no dwelling place in Texas and had no intention of returning to Texas to make a home there (M. R. 51, 52).

The findings of the Special Master are entitled to great weight and will not be set aside unless shown to be clearly unsupported by the evidence. We believe that such a showing is impossible because facts *which are undisputed* establish that Round Hills was Green's principal home at the time of his death. We shall not refer to *all* of the undisputed facts. Many of them have to do with details which clearly were not at all necessary to the ultimate findings of the Master and, even more clearly, are not at all necessary to sustain those findings in this Court. We shall refer only

to the undisputed facts which have to do with the larger aspects of Green's life. The facts within this limited class, standing alone, are sufficient to sustain the Master's ultimate finding that Round Hills was Green's principal home.

It is undisputed that Green's mother, Mrs. Hetty Green, died in 1916 and left him one-half of her huge fortune, subject only to a ten-year trust; that at that time Green's only dwelling place anywhere was the house in New York City which belonged to his grandfather Robinson's estate; that in July, 1917, Green married Miss Mabel Harlow.

It is clear that this was the appropriate moment for Green to make up his mind how he would lead his life in the new conditions which his mother's death and his marriage brought about. The normal and natural thing for Green to do was to establish a permanent home of a sort adapted to his character, tastes and interests. That he did not want to do this in either of the States with which he had been associated is proved by the fact that he did not then or at any time thereafter acquire any dwelling place in Texas and that in New York he did nothing more than move from a small house to a non-housekeeping hotel apartment.

It is undisputed that Green went to Round Hills, Massachusetts, in August, 1917, inspected the property there, which had been in the ownership of his ancestors for two hundred years, and started the development of the estate; that in 1918 he directed the preparation of plans for a house; that war conditions delayed the work; that in July, 1921, Green and Mrs. Green moved into the recently completed house; that he had assembled there most of the furniture which he had had in Texas and New York and most of his intimate personal belongings; that thereafter until his death Green spent an average of approxi-

mately five and one-half months at Round Hills, beginning his stay there on the first of July, or on two occasions earlier, and extending it usually into December and always into November; that the house at Round Hills was adequate as a home and the estate adapted for the establishment and development of the various scientific experiments and pursuits in which Green was interested and in which thereafter continuously until his death, or at least until his last illness, he was actively engaged, such as photography, radio, aviation, fog dispelling and atom smashing.

It is undisputed that in each of the years 1921, 1922 and 1923 Green was in New York for several months; that in the years from 1924 to and including 1933 he was there an average of less than two months in each year; that Green was not in New York at all during the last three years of his life on account of fear that he might be served as a defendant in a lawsuit; that in January, 1918, he abandoned the house in 90th Street owned by his grandfather Robinson's estate, and moved to an apartment in the Waldorf-Astoria; that when the Waldorf-Astoria was torn down in 1929 he moved to an apartment in the Sherry-Netherland Hotel, which he continued to lease from month to month until his death; that at no time after his mother's death was he engaged in any business in New York although he paid some attention to the management, first, of his mother's estate, and later of his own property; that after November, 1921, he never went to his office or attended any directors' meetings.

It is undisputed that in March, 1923, on the advice of his physician, Green made the first of his winter pilgrimages to Florida; that in the following years he spent in Florida the time which formerly it had been his custom to spend

in New York City; that during the years from 1927 to his death he was in Florida an average of four and a half months each year.

It is undisputed that the club house at No. 46 Star Island which Green had purchased in 1925 and completely remodelled and into which he moved in 1927 was adequate as a home and that the three-acre estate which surrounded it was attractive; that Green liked the Florida climate and that his health was benefited by it; that at Star Island Green engaged in no activities of a scientific nature; that the house at No. 46 Star Island, as compared with the house at Round Hills, contained few of Green's personal or intimate belongings; that life in Florida consisted of riding around in an automobile and chatting with townspeople and other residents of Miami and Miami Beach, sitting in the sun, watching private displays of moving pictures in his house, doing jig-saw puzzles and working over his coin collection.

It is undisputed that from 1892 until his death Green customarily claimed a legal residence in Terrell, Texas; that after July, 1921, Green was in Texas on comparatively brief visits only and that he had no dwelling place there, unless the private car owned by the railroad and which he was entitled to use until he ceased to be its president in 1928 can be called such.

It is undisputed that Green did not vote anywhere after 1920, when he voted in Texas, and that at no time and in no State did he pay taxes based on residence, except poll taxes in Texas in the amount of $2.75 a year.

It is undisputed that after traumatic arthritis developed in his good leg in November, 1921, Green could not get about without great difficulty; and that thereafter he never went to the theater, baseball games or other public places; that

in addition to this incapacity and beginning in 1932 Green's general physical condition began to deteriorate rapidly and that for the last two and a half years of his life he was virtually an invalid.

These undisputed facts are sufficient standing alone to sustain the ultimate finding that Round Hills became Green's *only* home before he ever went to Florida, and that after the acquisition of the Florida home Round Hills was his *principal* home and No. 46 Star Island a *subordinate* one. They also sustain the premises upon which the Master based his ultimate finding. They show that whether or not Green had a home and a domicile in New York prior to 1921, certainly he had no such interest in New York as to hold him there:

> "* * * he was free to establish a permanent home in any locality that he considered suitable, because he then had no attachment to the soil anywhere and was free from restraint." (M. R. 35)
>
> "* * * almost immediately after his marriage he went to Round Hills, Massachusetts, where he and his sister owned what he regarded as an ancestral tract of land, purchased additional land and there proceeded to erect a palatial home which was completed and occupied by him in 1921." (M. R. 51)

The undisputed facts show that the New York apartment probably was not a home at all and certainly was nothing more than a subordinate one:

> "During the last ten years of his life, this apartment in New York was used as a temporary sojourning place on his trips North and South * * *." (M. R. 33.)

Finally, the undisputed facts show that the home on Star Island was acquired and maintained simply because it was a good place to be in the winter:

"Everything he did indicated a seasonal vacation and relaxation from physical and mental effort." (M. R. 47)

"* * * his life in Florida was typical of an invalid seeking health * * *." (M. R. 47)

III. The facts upon which the exceptants rely create no doubt of the correctness of the Master's finding that Round Hills was Green's principal home at the time of his death.

What are the facts upon which the exceptants rely to sustain the burden of proving the Master wrong in finding that Round Hills was Green's only, or principal, home from 1921 until his death? The briefs of the States of Texas, New York and Florida disclose that between them they rely primarily upon only the following *five facts:*

1. The fact that from 1892 until his death Green claimed Terrell, Texas, as his domicile and legal residence.

2. The fact that the Round Hills house was built with the idea that it might some day be turned into some sort of an institution.

3. The fact that a great deal went on on the estate at Round Hills which was not conducive to quiet and repose.

4. The fact that Green spent only the months of July, August, September, October and November and part of December at Round Hills each year.

5. The fact that during the last years of Green's life he was less actively interested than formerly in the things that went on at Round Hills.

(1) As we have seen, it is elementary in the law of domicile that a man's desire or intention to have a *domicile*

in a certain place is irrelevant for purposes of the inquiry as to whether his *home* is there. The law fixes a man's domicile where he intends to make his home and not where he wishes to have his domicile. It is true, as Texas points out, that a man may retain a domicile in a state where he had a home, even after he has ceased to have any dwelling place there. But that can happen only when the man has a definite intention later on to return and make his home there. The defect in the facts fatal to the Texas case is that there is no credible testimony that Green at any time, and certainly at no time after July, 1921, had any intention of returning to Texas and making his home there.

(2) The evidence on the subject of the extent to which Green had it in mind that the house at Round Hills should be presently adequate for, and eventually converted into, an institution, goes no further than to indicate that he had some vague and general idea on the subject. But even if we should to a considerable extent accept the version of the exceptants and assume that Green had some very definite idea of converting the house into an institution in memory of his mother, still we fail to see how that would prevent Green from regarding the house as his permanent home during the fifteen years that he lived there continuously until his death. Indeed, if it is the fact that Green had a definite intention to convert the house into an institution after his death, that would seem to indicate an intimacy of interest in the estate and its permanence which would intensify his attitude towards it as a home and make it all the more his headquarters and the center of his life. There is no credible testimony that Green intended to convert the house into an institution at any definite time during his lifetime, or, for that matter, at any time at all during his lifetime. And in the absence of clear proof to that

effect, the fact that he did not do so during fifteen years of opportunity conclusively negatives the existence of such an intention.

(3) The exceptants argue at great length that because the activities at Round Hills brought large numbers of people and considerable noise to the estate, therefore it could not have been regarded by Green as his principal home. The argument ignores Green's character. He was genuinely fond of his fellow men,—in the flesh, not merely in the abstract. It gave him pleasure to see others benefited or amused by the opportunities he offered them. He enjoyed seeing the people use his beaches, and the more so because many of them talked with him. He was happy when thousands came to Round Hills to listen to the radio broadcasts and fill the grounds. Such being his favorite recreations, the noise and confusion brought satisfaction rather than unrest.

Green's other outstanding characteristic was his scientific turn of mind. Nature requires that most men, even if they are millionaires, have an occupation. Green made scientific experimentation and research in connection with photography, radio, aeronautics, fog-dispelling and atom-smashing his occupation and his life's work. He was impelled partly by his own scientific curiosity and partly by a desire to benefit the community. Similarly, although as a minor activity at Round Hills, he studied the history of the vicinity and of the whaling industry in which his ancestors had played an active part, with New Bedford as their home port. He contributed towards, and gave the land for, the perpetuation at Round Hills of the famous old whaling ship the "Charles W. Morgan" as an historical monument.

The opportunities for diversion which Green offered the people of the vicinity—and others who came long dis-

tances to enjoy them—brought him popularity and a sense of satisfaction. The scientific work which he did or made possible at Round Hills gave him a standing in scientific and educational circles which pleased him. Green did not want his headquarters to be a loafing place. He wanted them to be the place where he carried on the chief activities of his life and did the things which seemed to him the most worth while.

If Green had been interested in horse racing, he would have had a big breeding farm in the South and presumably he would have made it his home, as did Lamon V. Harkness (*Matter of Harkness*, 183 (N. Y.) App. Div. 396 (1918)). If he had once been a leader in the steel industry and had continued his business contacts and interests to the end, the law probably would have fixed his domicile in Pittsburgh, as it did the domicile of Henry C. Frick (*Matter of Frick*, 116 N. Y. Misc. 488 (1921)). In fact, however, Green's chief interest was in the scientific work and local philanthropy which he carried on at Round Hills. His heart was there and his home was there.

(4) All of the exceptants refer to the Round Hills home as a seasonal or summer home. The adjectives are misleading. Round Hills was never a summer home in the sense in which that phrase is customarily used. In the first place, Green, on the whole, stayed longer in the Round Hills home during each of the last fifteen years of his life than he stayed anywhere else. In the second place, the period of time that he was customarily there was not limited to any season. It extended from June or July well into December and thus covered the summer and the fall and ran into the New England winter. The fact that for one afflicted with rheumatism and arthritis the weather in November and December was far from beneficial establishes

that Green did not stay there for his health but because he was fond of the place and enjoyed and was interested in what went on there. Even when his health was failing fast in 1933 and 1934 he remained at Round Hills until the middle of December.

The fact that Green was at Round Hills not more than five and a half months on an average, establishes only that Green, like most rich men, preferred for one reason or another not to spend the whole year in one place. But the regularity with which he went to Round Hills on or before the first of July in each of the last fifteen years of his life, remaining for an average of five and a half months, establishes a permanence which cannot be denied.

Green could afford a long winter vacation, and after 1921, and more particularly after 1932, his health required it. The thousands from every State in the Union who leave their principal homes to go to Florida in the winter stay as long as they can afford to. They go there to rest and keep warm, and that is why Green went there. The only difference is that he was able to stay longer.

(5) The Florida exceptions are focused primarily upon the fact that during the last three years of Green's life he was less actively interested than formerly in the things that went on at Round Hills. The claim is made that his interest in Round Hills was waning, and his interest in Star Island increasing.

There is no doubt that during the years after Green moved into the Round Hills house in 1921 and before he first occupied the house at No. 46 Star Island in January, 1927, Round Hills was Green's principal, if not his only, home. He had visited Florida in 1923 and 1924, but it was not until April, 1924, that he purchased the first lot on Star Island. It was in February, 1925, that he purchased two

adjoining lots, on one of which stood the clubhouse which he ordered reconstructed and made into a residence. Green occupied it for the first time in January, 1927. If the Florida home had been acquired and developed in *substitution*, even if only partial, for the Round Hills home, there would be some basis for a claim that Star Island became Green's principal home. During those years at Round Hills Green *might* have found that the place dissatisfied or bored him. And, if so, he *might* have decided to completely change his life and make his headquarters on the three acres at Star Island.

But nothing at all like this actually happened. What happened was that, whereas in 1922 Green had gone to Dr. Buie's Sanitarium in Texas during the winter months, in 1923 he was advised to go to Florida. Thereafter he spent in Florida, the period between Christmas and the first of May or June, which theretofore he had spent in New York. He continued to spend just as much, and more, time at Round Hills than in the past, and his activities there increased. It is a fact that these years just after Green went to Florida were the years in which at Round Hills he was most active in radio and aviation and in the development of the estate. He was digging deeper into the soil of Massachusetts.

Florida does not name any date for its claim that No. 46 Star Island became Green's principal home. The Florida brief seems to recognize that it did *not* become Green's home when he first moved there. There is a great deal of talk about a gradual decrease in interest in Round Hills and an increase in interest in Star Island. And there is always an insistence that Star Island was the principal home at the date of Green's death. But just when the transfer took place, is not made clear. It appears, however, from the details relied upon to establish

the transfer, that if made at all, it must have been made in the very last years of Green's life.

The things in which Green's interest is claimed to have decreased in Massachusetts and increased in Florida were clubs, yachting and public charities. Assuming that in fact there was such a change, it does not help Florida. The Florida brief itself shows that none of these things was of any real importance in Green's life; therefore none of them could be of importance in locating Green's home. It is not claimed that Green ever used the clubs to which he belonged in either place, or that he went on his boats to any considerable extent, at least after 1929. Neither is it claimed that Green took any particular interest in public charity anywhere. The truth is that he preferred to make occasional large charitable gifts for special purposes and to benefit the community through the scientific enterprises which he financed and supervised at Round Hills. The Florida brief itself shows that Green's civic and charitable contributions averaged less than $1,000 a year for the last eight years of his life (Florida brief, pp. 17-18).

There is no doubt that after September, 1932, Green was a sick man. That is why his activities in his last years were considerably curtailed. The reason why they were curtailed more at Round Hills than in Florida is that in Florida there were fewer and lesser activities to curtail. Even a sick man can still sit in the sun, ride in an automobile, watch moving pictures and do jigsaw puzzles. But he cannot manage an aviation field and supervise experimental laboratories.

The fact that Florida claims that it was practically in his last illness that Green made Star Island his principal home shows how little merit there is in the Florida claim. Even then, Green spent no more time in Florida than in Massachusetts and made no change in the intimacy

of his relationship towards Round Hills. All of his many treasured possessions, his *lares et penates*, remained at Round Hills. Florida could find nothing of that sort at Star Island even at the end of Green's life, except some books, one photograph of his mother, two oil paintings of himself, several photographs of his wife, four awards by the National Stamp Association in New York, and Green's yachting trophies, whatever they may have been (Florida brief, p. 39).

From the *factual* point of view the Florida claim that in the last years of his life Green ceased to regard Round Hills as his principal home and came to regard Star Island in that light has no support. The factors relied upon by Florida and which we have mentioned are minutiæ. From the *legal* point of view there is no merit in the claim. The law does not fix a man's domicile at his deathbed or at the place which he finds the most beneficial to his health during his last illness.

The truth is that the only result of the acquisition of the Florida home was that Green transferred to Star Island the subordinate home, if it was a home at all, which he had had at the Waldorf-Astoria. Thereafter, he had a principal home at Round Hills, a subordinate home in Florida, and a stopping-off place in New York.

Conclusion.

Green's obligations to his mother took him to Texas and New York during the prime of his life and, later, arthritis led him to spend a part of each year in Florida. At the moment in his life when he was free from filial obligations and still in good health, when he had just inherited a fortune and been married, he settled in Massachusetts, on land which had been in his family for two hundred years. There he made himself a home which be-

came the center of the scientific and philanthropic activities which were his primary interests and the source of his greatest satisfactions. The law fixes Green's domicile where he made his principal home—at Round Hills, Massachusetts.

Respectfully submitted,

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JAN 31 1939
CHARLES ELMORE CROPLEY

Supreme Court of the United States.

October Term, 1938.

No. 11, Original.

The State of Texas,

Complainant,

v.

The State of Florida et als.,

Respondents.

BRIEF FOR THE RESPONDENT COMMONWEALTH OF MASSACHUSETTS.

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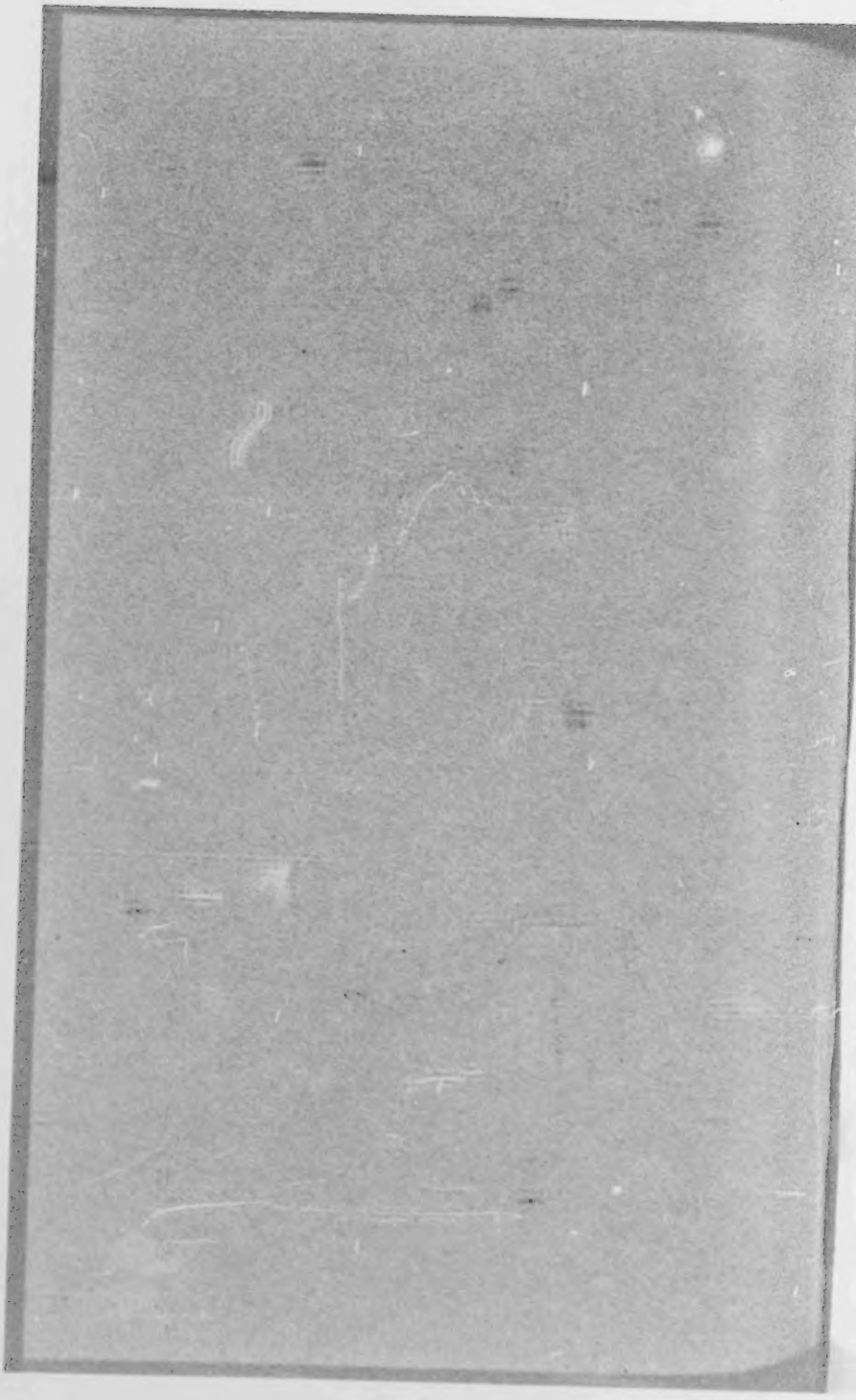

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Am. Law Inst., Restatement of Conflict of Laws, p. 48, sec. 24	45
I Beale, Conflict of Laws, p. 94, sec. 9.5	42
I Beale, Conflict of Laws, p. 150, sec. 19.2	49
I Beale, Conflict of Laws, p. 187, sec. 24.2	47
I Beale, Conflict of Laws, p. 189, sec. 24.2	48
I Beale, Conflict of Laws, p. 191, sec. 24.3	45
I Beale, Conflict of Laws, secs. 24.1 to 24.4	44
I Beale, Conflict of Laws, p. 148	16
Dicey, Conflict of Laws (5th ed.), p. 91	49
Federal Rules of Civil Procedure, No. 61½, 28 U.S.C.A. following sec. 723c	4
VI Halsbury, Laws of England (2d ed.), p. 202	49
Phillimore's Law of Domicil, p. 18	45
Story, Conflict of Laws (8th ed.), p. 40	43
Story, Conflict of Laws (8th ed.), p. 52, sec. 47	47

Supreme Court of the United States.

OCTOBER TERM, 1938.

No. 11, ORIGINAL.

THE STATE OF TEXAS, *Complainant*,

v.

THE STATE OF FLORIDA ET AL., *Respondents*.

BRIEF FOR THE RESPONDENT COMMONWEALTH OF MASSACHUSETTS.

THE CASE.

This is an original bill of complaint by the State of Texas against the States of Florida, Massachusetts and New York and Hetty Sylvia Ann Howland Green Wilks, surviving sister, and sole inheritor of the estate, of the late Edward Howland Robinson Green, who died June 8, 1936, leaving a gross estate of $40,144,229.73 (R. 1, 11).

The bill alleges (R. 1-4), and the Special Master finds (R. 10-15), that each State claims to be the State of Green's domicile at the time of his death so that it is entitled to collect from his estate a succession tax, and that if each respondent State proceeds to enforce its claim, as in the absence of this proceeding it intends to do (R. 13, 14), there will not be sufficient assets to pay the complainant's claim. The sovereign parties respondent, by way of cross-bill and counter-claim against one another, severally assert similar claims (R. 4).

The Master has found that the value of Green's net estate is insufficient by the amount of $1,589,877.79 to satisfy the tax claims of the United States and the four sovereign parties (R. 14, 15), and that the cause was instituted and prosecuted by the State of Texas solely in its own behalf (R. 15).

The prayers of the bill and of the answers of the sovereign parties respondent by way of cross-bill and counter-claim, and also of the answer of the respondent Wilks, are for an adjudication upon the single issue:

In which of the States was Edward Howland Robinson Green domiciled at the date of his death on June 8, 1936? (R. 4, 5).

The Court appointed the Honorable John S. Flannery of Washington, D.C., Special Master, and directed him to make findings of fact and conclusions of law and submit them to this Court together with his recommendations for a decree, said "findings, conclusions and recommendations . . . subject to consideration, revision or approval by the Court" (R. 5).

The Master has filed his report in which he finds and rules that Green's domicile at the date of his death in fact and in law was in the Commonwealth of Massachusetts, and recommends a final decree so adjudicating (R. 57).

The respondents Commonwealth of Massachusetts and Hetty Sylvia Ann Howland Green Wilks have filed no exceptions to the report. Massachusetts here seeks to sustain its adequacy and correctness.

The States of Texas, New York and Florida have each filed exceptions.

Each said State excepts to the Master's ultimate conclusion that Massachusetts was the state of domicile.

Texas claims that the Master erred in finding that Green's domicile of choice in Texas, acquired in 1892, was ever abandoned.

New York claims that the Master erred in failing to find that Green acquired a domicile in New York when he went there from Texas in 1911, which domicile persisted until Green's death.

Florida claims that the Master erred in failing to find that Green acquired a domicile in Florida in 1927 or thereafter superseding his earlier domicile, wherever it was.

WHILE THE MASTER'S FINDINGS ARE ADVISORY, THEY ARE PRESUMPTIVELY CORRECT AND WILL BE REVERSED ONLY IF ERROR HAS BEEN COMMITTED.

The Master's inferential findings and conclusions are, of course, under the order of reference, subject to the revision of the Court (R. 5). But where the Master has seen and heard the witnesses, his report will be treated as presumptively correct and will be revised only if the Court is satisfied that error has been committed.

> ". . . In dealing with these exceptions, the conclusions of the master, depending upon the weighing of conflicting testimony, have every reasonable presumption in their favor, and are not to be set aside or modified unless there clearly appears to have been error or mistake on his part. . . ." Gray, J., in *Tilghman* v. *Proctor*, 125 U.S. 136, 149.
>
> ". . . In practice it is not usual for the court to reject the report of a master, with his findings upon the matter referred to him, unless exceptions are taken to them and brought to its attention, and, upon examination, the findings are found unsupported or defective in

some essential particular. . . ." Field, J., in *Kimberly v. Arms*, 129 U.S. 512, 524.

Accord:

Callaghan v. *Myers*, 128 U.S. 617, 666.
Boesch v. *Gräff*, 133 U.S. 697, 705.
Camden v. *Stuart*, 144 U.S. 104, 118.
Girard Life Ins. Co. v. *Cooper*, 162 U.S. 529, 538.

Cf. Federal Rules of Civil Procedure, No. 61½, 28 U.S.C.A. following sec. 723c.

In the present case the Master saw and heard the witnesses. He was able to determine whether and to what extent testimony was influenced by bias. The report indicates that the Master did not attach weight to some of the testimony. For example, the reiterated statements of Florida witnesses that Green upon leaving Miami for Massachusetts said he was leaving on his "vacation" were either disbelieved by the Master, or taken as mere affabilities of Green's, as indicated by the finding that "everything he did indicated a seasonal vacation" in Florida (R. 47).

Similarly the Master was in the best position to determine the weight to be given to Green's own statements, both oral and written. There was an enormous amount of testimony bearing upon Green's character, eccentricities, desire to say things to please (D. 14, 385) and habit of jollying. As Texas counsel say in their Brief, "Many 'tall tales' crept into the record" (Texas Brief, 17). The Master was in the best position to know what to believe. For example, he finds that Green, while "facetiously calling himself a 'cracker'" (R. 47) and referring to Florida as "God's country," "did not attempt to make it his own" (R. 55).

Domicile: Problem Presented: Brief Statement of the Facts.

en, born in 1868, of New England parentage and back-
d—his mother Hetty Green, a native of New Bedford
), Massachusetts—lived from 1892 to 1911 in Terrell
ter in Dallas, Texas (R. 24), having been sent there
mother (R. 23), engaged in the management of his
r's railroad (R. 23) and in various business, political
ientific pursuits (R. 25-6).

911, responding to the call of his mother, aged and in
health (R. 28), he sold his Texas home (R. 24) and
t all his household goods, and Miss Harlow whom he
arried, to New York, where he lived with her in a
owned by his family (R. 28), and assisted his mother
management of her fortune until her death in 1916
).

is mother's death, inheritor of a vast fortune, he
a palatial yacht (R. 28-9), married in Illinois (R.
d built and furnished a costly monumental home on
stral seashore property called Round Hills, in South
uth, Massachusetts, adjacent to New Bedford, begun
and first occupied in July, 1921 (R. 35-51), to which
ght all his household goods (R. 33); in the meantime
ed a furnished hotel apartment in New York (R.
thereafter and until 1924 divided his time princi-
tween the two places, spending more time in Massa-
however than in New York (chart, end of Brief).
was not engaged in business in New York. The
ment of the Green fortune consisted principally in
money on call, mortgage securities, and the invest-
d re-investment in tax-exempt bonds (R. 31). He
ent four or five hours a week at the office prior
other's death (R. 31), and after October, 1921, when
e arthritis in his one leg made it difficult for him
out, he never went to his office and kept in touch

with it only by visits from its manager and by correspondence (R. 31). Green was principally interested in scientific experimentation, and his pursuits therein he carried on exclusively at Round Hills in Massachusetts (R. 40, 41), where he constructed and operated a radio broadcasting station and aviation field, and where he conducted alone and with the Massachusetts Institute of Technology various investigations and experimentations in radio communication with airplanes, long-distance photography, television, moving pictures, fog dissipation and aviation (R. 19, 39-41).

In 1923 he spent the winter in Florida on account of his health (R. 54), and later purchased and remodelled a clubhouse on Star Island, Miami Beach (R. 43, 44-54), into a far less costly home than Round Hills (R. 42, 46), and furnished it, to which he took none of his household goods (R. 45), and after its first occupancy in 1927 (R. 44) he divided his time principally between his Massachusetts and Florida homes (R. 44-55), with his New York hotel suite, held under a mere tenancy at will, as a place of brief sojourn *en route* between them (R. 33, 54).

As between Round Hills and Star Island, Round Hills was the earlier, as well as the principal, predominant and permanent home; it contained his *lares et penates,* was the center of most of his interests and activities, represented an investment of $7,000,000 against $1,500,000, and over a period of years he spent five and one-half months a year there as against four and one-half at Star Island (R. 56).

From the time he left Texas in 1911, throughout the last twenty-five years, Green, although having no place of abode whatever in Texas (R. 25), escaped all State taxation upon income and intangible personalty (R. 21) by claiming legal residence and paying a poll tax in Texas, where there was no income tax law and no enforcement against him of the tax on personalty (R. 52). He wrote his attorney that he had no sentiment where his legal residence should be (R. 53).

He died at Lake Placid, New York, June 8, 1936 (R. 27), whence his remains were brought to South Dartmouth for funeral services (R. 42). Burial was in Bellows Falls, Vermont, in the family lot (R. 19).

Upon these and supporting facts, the Master found and ruled that Green's domicile at the date of his death was in Massachusetts.

Plan of Brief.

Our present task is to assist the Court in arriving at a determination whether or not it should adopt the Master's findings or whether error has been committed therein.

1. We shall first present our factual argument (Brief, *infra*, pp. 8-41), for the purpose of showing that the Master's inferential findings of fact are sound and supported by the record.

2. We shall then present our argument upon the law (Brief, *infra*, pp. 42-50), for the purpose of showing that the Master's conclusion of Massachusetts domicile is sound in law.

We have also lodged with the Clerk an appendix, which contains two parts, (1) a statement of the facts supporting the Massachusetts findings with references to the supporting evidence. If the Court feels it incumbent upon itself to test the Master's conclusions by an examination of the proofs this statement is designed to facilitate such inquiry. (2) A reprint of the Master's findings of fact with the passages which are excepted to italicized and commented on. We believe that this will enable the Court to see at a glance the extent to which the report is unchallenged and the invalidity and insignificance of the exceptions.*

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*Abbreviations employed:
R. Master's Report;
D. Master's Digest of the evidence;
Ev. Evidence as contained in the stenographer's transcript;
Ex. Exhibit;
Exc. Exception.

Factual Argument.

The fundamental proposition which Massachusetts seeks to establish, and succeeded in establishing in the mind of the Master, is that Green established his home, and thereby acquired a domicile, in Massachusetts in July, 1921, which continued until his death in June, 1936.

We shall submit that Green's domicile was in Massachusetts because his permanent and principal home was there; that his domicile was not in Texas, in spite of his declarations, because he had no home there and no intention ever to return there to make a home; and it was not in New York or Florida because his residences in those States were, if homes at all as that word is used in the law fixing domicile, subordinate to his principal home in Massachusetts.

In considering Green's life prior to his coming to Massachusetts we shall only refer to those features of it which throw light upon and give meaning and significance to the later period.

As was said in *Attorney General* v. *Yule & Mercantile Bank of India* (1931), 145 Law Times, 9, at page 13:

> "In my opinion Rowlatt, J. was right in his view that the earlier period of Sir David's life cannot be estimated in a compartment separate from his later years, and that the later years must be regarded as throwing light upon the earlier."

1. Green went to Texas at his mother's direction and in her employment. He was financially dependent upon her and under her domination while there.

While Texas was a domicile of choice in the legal sense, as distinguished from a domicile of origin, it was not in fact the domicile of Green's own choice, but of his mother's.

Mrs. Hetty Green sent her son in his early twenties to Chicago to superintend her real estate in that city. After he had been there several years the Texas Midland Railroad, a short intrastate line in Texas, defaulted on its bonds, which were owned by Mrs. Green, and she sent Green in 1892, at the age of twenty-four, to Texas to manage the railroad (R. 23).

Green became president, manager and director of the road, taking up his residence in Terrell, where the headquarters of the road were situated (R. 23, 24). The Master has found that "While in Texas he was largely dependent upon his mother for support" (R. 21). The extent of this dependence and his subordination to his mother's command are evidenced by numerous episodes. We cite two:

In 1893 Green wrote his mother the following letter:

"Dear Mama

I am 25 years old to day I think you might send me money so I could go the Fair at Chicago. in about two weeks befor the fall rush comes. It would only cost about 200 $^{0}/_{100}$ dollars. I can get Passes to Chicago and return let me know as soon as you can so I can get redy I want to see the Fair so bad. please let me go

Your Affect son

Ned" (Mass. Ex. 67, Ev. 5845, D. 268).

In 1906, when Green was thirty-eight years old, he was nominated for Governor by the Republican State Convention at Houston. He declined the nomination and so notified the Convention, upon instructions from his mother that he must not accept any political nomination (D. 19), and he received at that time the following letter from his mother:

"My dear son—The compliment your great and adopted state has tendered to you, I know you will not

forget your Mother who needs & demands your assistance part of the year. In haste loving your Mother Hetty H. R. Green Bellows Falls Aug. 27th/06" (Tex. Ex. 3, Ev. 466, D. 19).

2. Green left Texas for New York in 1911 at his mother's request to assist her in the management of her property in New York.

Beginning at least as early as June, 1909, Mrs. Hetty Green frequently wrote her son telling of her loneliness and her need of his companionship and assistance, the burden of "so much care for an old lady" (Tex. Ex. 312, Ev. 2439), and expressing her "wish we could sell the road" (Tex. Ex. 307, Ev. 2431), again saying: "sell . . . railroad if we can" (Tex. Ex. 314, Ev. 2442, Tex. Exs. 306-315, Ev. 2428-43).

In 1910 Green went to New York with his secretary Walter Marshall and spent several months with his mother. He then returned to Texas, and after putting his affairs in order wrote her:

"Nov 24 1910-

My dear Mama.

I am getting over the rush here and will be ready to come north when ever you need me. * * * I can come up any time you need me, I am getting my health back. dont be afread to send for me when ever you neet me I can come. With love and kisses. NED." (Mass. Ex. 3, Ev. 119).

In the following July, 1911, he left Texas and went to New York.

3. When Green left Texas in 1911 he started to attempt to dispose of the Texas Midland Railroad, which was failing financially, and continued his attempts until it was sold in 1927, after which he made but one visit to Texas, which was at a sanitarium in 1935.

The Texas Midland Railroad was never a financial success (R. 23); it earned only 3½ per cent on its invested capital, which was one-half of 1 per cent short of meeting the interest on its bonds (McKay, Ev. 784-5), and from 1910, when competition from parallel motor bus transportation began, the business steadily declined, until in 1915 the road had lost 40 per cent of its traffic (McKay, Ev. 628, 629, 594, 595, D. 25). Mrs. Hetty Green was already urging Green to sell the road if he could (Brief, *supra*, p. 10), and when Green left Texas in 1911 he gave instructions to his associates to see if they could sell it. In 1915 the actual attempt to dispose of it began (McKay, Ev. 628-31, D. 27; 635, D. 27; 749-51, D. 33), which terminated in its sale in 1927 (McKay, Ev. 632-3, D. 27), after which Green made but one visit to Texas, when, in failing health, he was taken to a sanitarium in Marlin in 1935 (Wells, Ev. 100-1, D. 6).

4. Green's chief interests in Texas were in scientific experimentation. These interests were suspended by force of circumstances in New York, but found full expression at the Round Hills estate in Massachusetts, and nowhere else.

One important feature of Green's Texas life lends strong support to Massachusetts, as against New York or Florida, domicile. In Texas, Green early developed a keen and active interest in scientific experimentation, more particularly in the pioneer stages of inventions (R. 25-6).

These interests as Green developed them are not properly described as mere "hobbies," but represented an earnest desire on Green's part to acquire knowledge on those sub-

jects (Wells, Ev. 104). The Master summarizes these activities as follows:

> "Aside from his railroad activities, Green engaged in farming of an experimental nature upon his farm of 200 acres * * * he experimented for the control of the boll weevil * * *, with cottonseed meal for human consumption; with the use of the round bale for cotton; with the terracing and conservation of land against wind and water erosion; with the use of lignite deposits for fuel * * *. He developed thirteen acres of greenhouses and was one of the first rosarians in Texas, and also engaged in the poultry and pecan culture. He brought the first automobile to Texas and developed autoracing; became interested in aeronautics and organized an aviation meet at Dallas; was active in the formation of the Texas State Fair at Dallas; placed an order for the first airplane to be brought to the Fair; * * * He had the first motion picture machine in Terrell * * *" (R. 25, 26).

In Massachusetts, as we shall develop later (Brief, *infra*, pp. 24-26; and see Master's Report, 40), Green gave full expression to his interest in such matters. It is fair to say that Green's main interest in Texas, suspended by force of circumstances in New York, found full expression at his Round Hills estate in Massachusetts and nowhere else.

5. Green preferred association with common ordinary folk rather than polite society. This companionship he found in Texas, while he took an intense dislike for New York people and society. In Massachusetts he opened his grounds to the public and enjoyed watching the people and mingling with them.

In Texas Green exhibited a marked preference for associating with the "man in the street" and for society *en*

masse rather than for polite society and social functions (R. 20). While he joined clubs, societies and organizations wherever he dwelt, he rarely or never attended them (R. 20). His manner of domestic life itself prevented his intimate association with people who respected the conventions. He loved to hobnob with his railroad employees and farmers (Marshall, Ev. 5631-4; McDonald, Ev. 484-6, 500-1; Wells, Ev. 112-14; Donn, Ev. 8204, R. 20, 27).

When he came to New York and became a member of the Union Club and other exclusive organizations and was brought into contact with New York business and professional men, he was unhappy. He "didn't fit." As the Master has found, "He had no close personal friends or associates in New York" (R. 31), and again, "he had no close friends in that city and did not like the life or the people" (R. 54). On the other hand, at South Dartmouth he revelled in his contacts with the "common people." Disdaining the society of the "ice cream pants," as he derisively called his aristocratic neighbors at Salters Point and Nonquitt (Marshall, Ev. 5632), he always kept his estate open to the public, and attracted thousands to it by giving free radio concerts, allowing free access to the whaling vessel "Charles W. Morgan," and permitting the public use of his beaches (R. 39).

6. Green, after going to New York, remained in his mother's employment and under her domination until her death in July, 1916. He was indifferent to business, disliked New York people, and gave no indication of an intent to remain resident there after his mother's death. He lacked the intent to establish his home there.

Green went to New York, as he went to Texas, not from his own choice, but his mother's, and he remained under his mother's domination while in New York even more

closely than he had while in Texas. That his mode of life was dictated by his mother rather than by his own choice is indicated by his own speedy abandonment of it as soon as he became his own master.

It is New York's contention that Green became domiciled there in 1911 and never abandoned that domicile. It is essential to New York's claim to prove this, for after his mother's death in 1916, Green's interest in New York affairs as well as his personal presence in New York constantly diminished to the vanishing point (see diagram at end of Brief).

Massachusetts regards it as unessential to its case to determine the question whether Green became domiciled in New York or not, because the acquisition of the Massachusetts domicile worked the abandonment of his former domicile whether it was in Texas or New York (Brief, *infra*, pp. 43-48).

The Master dealt with the question of Green's intent with reference to making a home in New York as follows:

"After 1911 Green *no longer had a place of residence in Texas* (R. 51). . . . His intention to return to Texas might be presumed while he was temporarily residing in New York . . . if he had done nothing inconsistent with the intention to return. After his mother's death in 1916, his marriage in 1917, and he had come into the full enjoyment of his fortune and was free from restraint, Green might have returned to Texas and re-established himself in an actual permanent home there," but instead of doing that, almost immediately after his marriage, he went to Round Hills, Massachusetts, and proceeded to erect a home there (R. 51). "Thus," says the Master, "we have the actual abandonment of the Texas domicile of choice and the actual acquisition of a new home in Massachusetts" (R. 52).

There were, to be sure, many indications of a definite and permanent quitting of Texas in 1911. The sale of

Green's only Texas home (R. 24), the removal of his household goods and automobiles to New York (R. 25), the disposal of the Green Floral Company (D. 6) which was the only business which he owned and managed in Texas, the initiation of negotiations to sell the railroad, the taking up of residence in New York with Miss Mabel Harlow (R. 28), the bringing there of his private secretary Walter Marshall whose family accompanied him (R. 28), the assumption of directorates in several New York financial institutions (R. 30-1), the joining of several social clubs (R. 31), all point to an intention not to return to Texas to live.

On the other hand, Green continued to vote in Terrell until 1920 (R. 26), took an active part in Texas politics (D. 20), was a Colonel on Governor Colquitt's staff for two successive terms from 1911 to 1915 (R. 26), continued to hold directorates in banks at Dallas and Terrell (D. 204), maintained for three years a colorable place of abode at Mrs. Jarvis' home in Terrell so as to have a nominal residence to permit him to vote there (R. 25), all of which tended to indicate a desire to retain his old Texas citizenship and residence. And there was testimony of an old Texas friend, that, on one occasion when he met Green in New York in 1913, Green said, "If it were not for my mother's business I would not stay in this place, because up here it is dog eat dog; I would like to go back to Texas where a man is a man whether he has a dollar or not; I hope some day to go back there to live" (D. 372, Ev. 8839). Green's state of mind may well have been accurately expressed in his letter of January 23, 1912, to his Dallas attorney, declining to put additional money into certain enterprises "as I have left Texas, *probably* for good" (Mass. Ex. 40, Ev. 4931).

Green's roots never struck deep into New York soil. He resided in an old brown stone four-story house at No. 5 West 90th Street (R. 28-9), in a declining neighborhood

(R. 32). His mother used a similar house, No. 7, next door for her office, and Green assisted her there (R. 28). Both houses were owned by the estate of Green's grandfather Robinson (R. 31-2), and their employment for purposes of Green's residence and his mother's office was obviously due to his mother's desire for economy. Mrs. Hetty Green herself was not resident in New York, but in Bellows Falls, Vermont (*Matter of H. H. R. Green*, 99 Misc. 582; 164 N.Y.S. 1063; affirmed, 179 App. Div. 890; 165 N.Y.S. 1088) (Tex. Ex. 288, Ev. 2326, D. 66). Green usually spent from one-half to three-quarters of an hour at his mother's office, sometimes returning later in the day (D. 124), and a somewhat longer time at the Seaboard Bank (R. 30). After his mother's death he devoted even less time to business. He was not at his own office more than four or five hours a week altogether (D. 405), and was never there after October, 1921 (R. 31). He then centered all his activities at Round Hills (Brief, *infra*, pp. 24-29).

Upon these facts, with much supporting evidence, the Master was fully justified in his conclusion that Green did not intend to establish a home in New York and that therefore the Texas domicile persisted until the establishment of the Massachusetts home in 1921.

I Beale, Conflict of Laws, pp. 148-9.

New York in its Brief emphasizes that domicile once acquired is presumed to continue until it is shown to have been changed, and that where a change is alleged the burden of proving it rests upon the person making the allegation (N.Y. Brief, pp. 24-27).

Mitchell v. *United States*, 21 Wall. 350, 353.
Desmare v. *United States*, 93 U.S. 605, 610.

The burden, therefore, was upon New York to convince the Master that Green intended to make his home there, and New York failed to sustain that burden.

7. Green, while maintaining a hotel suite in New York on a month-to-month tenancy, came to treat it as a place of mere temporary sojourn, and after 1933 never visited it.

We have seen that the Master found that Green did not become domiciled in New York prior to the acquisition of his Massachusetts home (Brief, *supra*, pp. 13-16; R. 52, 54). The adoption of that finding by the Court would settle New York's claim without more, as no claim has been made that a New York domicile was acquired after that date.

If, however, the Court should reverse the Master's finding on this point, then it becomes incumbent on Massachusetts to show that Round Hills became Green's principal home, while New York became either a subordinate home or no home at all. The Master has found the essential facts in favor of Massachusetts on this issue. His crucial findings are:

> "He had no close friends in that City and did not like the life or the people. After 1921, he was unable to go to theatres or baseball games as theretofore and was compelled to spend his time indoors and adopt hobbies which replaced his outdoor activities. He removed all of the furnishings of his former residence, 5 West Ninetieth Street and all of the early associations with his mother, except a few of her letters, to South Dartmouth. * * * He never went to his office, 111 Broadway, after 1921 and carefully refrained from visiting the City during the last years of his life because of pending litigation. At the time of his death, his apartment in the Sherry-Netherland was under a temporary lease [a tenancy at will, Mass. Ex. 50, D. 169; Mass. Exs. 51-2, D. 169)] and for many years had been occupied by him for brief periods in the Spring and Fall while en route from Massachusetts and Florida" (R. 54).

"During the last ten years of his life, this apartment in New York was used as a temporary sojourning place on his trips North and South and at the time of his death, contained over 100 of his mother's letters, a portion of his stamp collection, his interest in which had been slight since 1927, some clothing of Mrs. Green and a few personal belongings worth less than $1,000" (R. 33).

The evidence clearly supports the Master's conclusion.

When Green first occupied Round Hills in 1921 he made mid-weekly trips to New York. From 1922 on his stays at Round Hills in the latter approximate half of the year were uninterrupted by such absences; the rest of the year Green divided between New York, Florida and the Buie Sanitarium at Marlin, Texas, through 1927. From 1928 he omitted the visit to Texas, spending the early part of the year at Star Island. From that time he merely stopped off at the New York apartment *en route* between Round Hills and Star Island (see diagram at end of brief).

Green's mental attitude accorded with the fact just stated, as appears from numerous expressions in his correspondence. He wrote in 1931 that his New York apartment was "only temporary and is used only for a short time between my summers in Massachusetts and winters in Florida" (Mass. Ex. 313, Ev. 5331-3). In 1930 he wrote: "My visits to New York are rather infrequent of late and of short duration" (Mass. Ex. 279, Ev. 5317). And there was reliable testimony of similar oral statements (J. O. Green, Ev. 3026, D. 118; Lincoln Brown, Jr., Ev. 8389, D. 356; Cleary, Ev. 9478-9, D. 395; Newington, Ev. 2766-7, D. 91; see also Strandell, Ev. 9687-9, D. 405).

The Master has found without exception by New York:

"After his illness in November, 1921, all of his activities in New York ceased; the last bank directors'

meeting he attended was October 20th, 1921, and he never went to his office, 111 Broadway, after that date and kept in touch with it by visits from Potter or by correspondence.

"Green never entertained socially in New York but occasionally gave theater parties to some of his young protegées. Until 1921, he went to baseball games in the afternoon and to the theater in the evening. After 1921, his evenings were spent in his apartment playing games, listening to the radio and working on his stamp collection. He had no close personal friends or associates in New York. The confinement resulting from this indoor life bored him and made him unhappy" (R. 31).

New York in its brief has been unable to point to any evidence indicating activities and interests of Green in New York in the last ten years of his life.

If, therefore, New York at any time had been Green's home, it had ceased to be so long before his death. It had not merely sunk into the position of a subordinate home, but had ceased to be a home in any sense and had become a place of mere temporary sojourn (Brief, *infra*, pp. 46-7).

8. After Green had become independent of his mother's domination by her death, had inherited a vast fortune, and was married, he established his marital domicile at Round Hills, South Dartmouth, Massachusetts.

Upon the death of Mrs. Hetty Green in July, 1916, Green for the first time was emancipated from her control and influence and came into his fortune (R. 51). Within a month he moved the office from 7 West 90th Street, where his mother had maintained it, to 111 Broadway (N.Y. Ex. 1; Ev. 378). He bought a Great Lakes steamer, brought it to the Atlantic seaboard, had it cut in two, lengthened and

converted into the largest private yacht in the world (Marshall, Ev. 5353-4, D. 241). In July, 1917, he married Miss Mabel Harlow at Highland Park, Illinois (N.Y. Ex. 2; Ev. 380, R. 29). The Master finds:

> "In the month following his marriage, he and Mrs. Green sailed to Buzzards Bay and anchored off Round Hills Farm, a property which Green and his sister had inherited from their mother. As a boy he had spent two summers there with his mother and sister. It was a seacoast property of approximately 130 acres, located at South Dartmouth, Massachusetts, about eight miles from New Bedford, which had been in the ownership of his Howland ancestors for over 200 years—from the time of the original Indian grants—and was regarded by Green as an ancestral estate. The only structures then on the property were the old Howland homestead and some outbuildings. On this first visit in August, 1917, he determined to develop the property into a great country estate and build there a monumental home * * * From 1918 to 1921, the development of this property was his principal occupation" (R. 35).

He immediately started development of the property, began actual building of the mansion in June, 1919, when Mrs. Green turned the first spadeful of earth, and occupied it in July, 1921 (R. 35). To this house he transferred the furnishings of the house he had lived in in New York at 5 West 90th Street (R. 33).

The Master has described this property and Green's development of it (R. 36), the purchase of 140 additional acres (R. 36), the house itself (R. 37, and picture, R. 59), the collection therein of all his family possessions and heirlooms including the oil portraits of his mother (R. 37, 38), the staffing of the house with thirty servants and the grounds

with some fifty more (R. 38), and the concentration of Green's activities and interests at Round Hills (R. 39).

The total cost of the Round Hills house and its furnishings was approximately $785,000, of the Round Hills farm $616,000, and between 1917 and 1936 Green expended on the Round Hills estate on both capital and maintenance accounts $6,688,000, an amount vastly in excess of such expenditures elsewhere (R. 42).

9. Green did not found his home at Round Hills for purposes of his health. He was strong, robust and energetic at the time. Later as his health declined he persisted in remaining there usually into December despite the advice of his doctors.

As domicile is not commonly changed by presence in a place merely for one's health, it may be of importance that Green did not go to Round Hills for his health.

The Master has found that it was in August, 1917, that Green determined to develop the Round Hills property "into a great country estate and build there a monumental home" (R. 35). Construction began in June, 1919 (R. 35), and the house was occupied in July, 1921 (R. 35). These events fell within the period of which the Master says: "This period from 1911 to 1921 was the most active of Green's business career" (R. 29), and that "he was strong, robust and energetic until November 1921" (R. 20).

We emphasize this because there are statements in the report which tend to confuse.

The Master divides Green's life into three domiciliary periods: (1) early manhood in Texas, 1892-1911; (2) business career in New York, 1911-1921; (3) period of decline and pursuit of health from 1921-1936; and he describes this third period as the "twilight years when he was unable to

pursue the outdoor existence he loved * * * when he found himself in possession of an enormous fortune, which he *began to spend freely in the erection of beautiful homes at South Dartmouth* and Star Island * * *" (R. 22). This must not be taken as referring to the erection of the Round Hills mansion, which was already complete and occupied.

On page 35 the Master again refers to this "third and closing period of Green's life" and follows with a narration of the events of the earlier period. We take no exception to anything that is said, but say merely by way of caution that the arrangement on first reading might convey an erroneous impression that Green established himself at Round Hills in the later period.

In point of fact, after Green's arthritic condition became serious, and to an even greater degree after his cardiac condition developed in September, 1932, the fog and dampness at Round Hills was bad for his health, notwithstanding which he insisted on staying there usually into the middle of December, telling Professor Bowles that he was going to continue to go there and if he was going to die there, that was that, "because he wanted to be there" (Ev. 6846-7, D. 324). The places where Green went for his health were Dr. Buie's Sanitarium at Marlin, Texas (Ev. 836-8, D. 36); Florida (Ev. 4169, D. 167); Asheville, North Carolina (Ev. 4167-8, D. 167); and Lake Placid, New York (Ev. 4176-7), while he insisted on staying late at Round Hills against his doctor's advice (Ev. 4177, D. 167; Ev. 7034, D. 329).

10. After Green's occupancy of Round Hills in July, 1921, he spent more time there than in any other dwelling place.

In 1921, when the Round Hills house was first occupied, Green spent three and one-half months there from July 1st to October 15th, when he went on his regular fall trip to

Texas. The house remained open and completely staffed, but Green's acute illness in Dallas in October, 1921, and his subsequent course of treatment in New York, made his return to Round Hills that year impossible.

From 1922 throughout the remainder of his life Green spent approximately five and one-half months of every year at Round Hills, except in four years when illness required him to go to New York City for medical attention (November 15, 1923) or to Asheville, North Carolina (November 5, 1930), Lake Placid, New York (October 24, 1932), or Florida (November 25, 1935), for the sake of his health (Ev. 4145, D. 165; Ev. 4168, D. 167; Ev. 4176-7, D. 167). In the other ten of these fourteen years he arrived at least as early as July 1st and remained into December (R. 43, and diagram at end of Brief).

This time did not diminish in his closing years, except in 1930, when he left in November to go to Asheville, North Carolina, and in 1932, when he left in November to go to Lake Placid, New York, both at his doctor's insistence.

11. Green's desire to avoid taxation in Massachusetts was responsible for his not arriving before July 1st and of his not extending his stay beyond six months in any year.

In Massachusetts there has been in force since 1917 a personal income tax at very high rates upon income from investments. The statute provided from that time until it was amended in 1929 that every person who was "an inhabitant of the Commonwealth at any time between the first day of January and the thirtieth day of June, both inclusive in any year" should make a return and pay the tax. The provisions of this statute were called to Green's attention by his attorney in January, 1919 (Mass. Ex. 71, Ev. 5100, 5102, D. 215). Thereafter and until 1934 Green did not go into Massachusetts before July 1st in any year

(Ev. 4963-4, D. 207; Mass. Ex. 18, Ev. 818-20), habitually arriving early in the morning of that day, and did not stay there after the 18th of December in any year (Mass. Ex. 18, Ev. 818-20, R. 42). He explained on many occasions that he adopted this practice in order to avoid liability for Massachusetts taxes (Ev. 5364-5, D. 242; Ev. 5709-10, D. 260; Ev. 5765-6, D. 263; Ev. 4989-90, D. 209). The Massachusetts statute was amended in 1929, eliminating the words "between the first day of January and the thirtieth day of June, both inclusive," and Green's attorneys so advised him (Mass. Ex. 287, Ev. 5175). Thereafter in both 1934 and 1935 Green went to Massachusetts in June, but did not remain there for as much as six months in either year (Mass. Ex. 18, Ev. 818-20). He stated on numerous occasions that he could not stay in Massachusetts as much as six months in any year, on account of Massachusetts taxes (citations *supra*).

12. Round Hills became the center of Green's horticultural and scientific activities.

We have already seen that Green had developed little or no interest in business or finance (Brief, *supra*, p. 16) and that his serious interests were in the direction of scientific experimentation, particularly with the early stages of new inventions (Brief, *supra*, pp. 11-12).

From October, 1921, his arthritic condition made it difficult for him to get about, so that business was not only distasteful but painful to pursue. This physical disability in moving around made Round Hills all the more important to him. There he was able to supervise and watch all the activities for which the place was so unique. "He used a small electric hand-operated car by which he propelled himself around the grounds and later bought a small closed electric car with heating equipment which could be used in cold weather. This car was fitted with appliances for his col-

lections, books and papers and enabled him to be outdoors in all kinds of weather, to give attention to the various activities there" (R. 39, and picture, R. 63).

Green practically relinquished all attention to business and devoted himself entirely to the pursuit of his principal interests at Round Hills.

The Master finds he "gave some attention to farming and horticulture as in Texas, had a dairy, raised goats, poultry, etc., and employed about forty farm hands, half of whom stayed all the year round. His farm supplied the house with vegetables and his greenhouse furnished flowers" (R. 39).

He maintained a photographic laboratory (R. 40).

In 1922, having become interested in radio, he constructed two broadcasting stations and enlarged them in 1925 so that programs could be sent from his station, WMAF, called "The Voice From Way Down East," throughout New England and even to Europe. At the end of 1927, when broadcasting became commonplace, he lost his interest in this phase of radio and devoted his attention to it as a means of communication, etc. (R. 40).

The Master has found, without exception:

> "In 1927, his interest became centered in aviation and the use of radio in connection with navigation by air and sea. He placed a number of his buildings and his radio facilities at the disposal of the Massachusetts Institute of Technology, for experimental purposes, in connection with radio communication between the ground and air, direction finding, transmission of radio beams for the guidance of aviators, and in connection with this project he began the same year the construction of a fully equipped airport, with facilities for landing hydroplanes as well as airplanes, obtained licenses to dredge and fill in sections of the waterfront, and con-

structed a hangar and runway for airplanes. In connection with the Massachusetts Institute of Technology, he arranged with the Goodyear Tire & Rubber Company to supply a blimp for research work and built a blimp dock. This airport was rated A1 by the United States Government and no landing charge was made. He employed a superintendent and established a school for aviators. In 1929, purchased a flying boat for his wife called the "Miami Maid" which he kept at Round Hills. He studied the subject and could discuss aeronautics intelligently with mechanics upon his daily visits to the airport which was maintained in good condition until his death.

"The Round Hills Research Division of the Massachusetts Institute of Technology started in 1925 and continued until his death. It began with a study of radio as aid to navigation and studies were made of the penetration and dissipation of fog as an aid to air navigation. In 1931, experiments were begun with high voltage generators for the 'smashing' of atoms, etc. Green took a personal interest in these experiments and it was his custom to make daily visits to the workshop and laboratory. In the relief work during the Vermont flood in November, 1927, and in connection with the sinking of the 'Vestris' November, 1929, and signalling to the Graf Zeppelin on her maiden voyage, as well as during the Byrd Antarctic Expedition of 1926-7, this station demonstrated its practical usefulness. Some part of this experimental work was carried on in collaboration with the United States Government. These various facilities cost Green upwards of $1,250,000 between 1925 and 1933, in addition to the money gifts made to the Institute of Technology. Pecuniary donations were discontinued after 1933 but he continued to supply the facilities" (R. 40, 41).

13. Green displayed great interest in the history of Round Hills and New Bedford and its whaling industry, in which his ancestors had figured, which interest he manifested in the enshrining of the whale-ship "Charles W. Morgan," the collection of books, pictures and antiquities dealing with the whaling industry and with Gosnold's voyage to New England touching at Round Hills in 1602.

Green displayed vital interest in the history and antiquities associated with New Bedford and its whaling industry, in which his forebears had prominently figured, and in the traditions of Round Hills, which had belonged to his family for many generations.

The Master has found without exception:

"Early in his development of Round Hills, Green began to assemble books, antiquities, etc., connected with the whaling industry in which his forebears had prominently engaged. In 1924 he tried to purchase the 'Charles W. Morgan', an old whaling ship which had belonged to his ancestors at one time and finally arranged to have it transferred to Whaling Enshrined, Inc., to which corporation he transferred a part of his shoreland for a concrete berth and dock. Until his death he donated $10,000 [annually] to the maintenance of the ship and her crew of a Captain and nine sailors. He collected flags which had been used as signals by the New Bedford Fleet and on anniversaries had them displayed. This ship was kept open to the public without charge and about 125,000 people visited it yearly. In connection with the 'Morgan', it was originally his intention to construct a whaling village and museum but this project, while started, was never completed.

"Many volumes in his library relating to whaling and maritime industry and Gosnold's Voyage to New England in 1602 were of great rarity. Green had expert ad-

vice and gave much personal attention to the collection of these books and to histories relating to the genealogy of the Howlands and the early history of New England, New Bedford and South Dartmouth. In his application for membership in the Massachusetts Society of the Sons of the Revolution and the Society of Colonial Wars, he claimed lineal descent from Massachusetts and Rhode Island ancestors. He also had a tablet in memory of his mother placed in the room of the Massachusetts Historical Genealogical Society" (R. 41).

Green never exhibited any interests similar to these in any part of the country other than in Massachusetts.

14. Green identified himself with Round Hills.

As the foregoing activities indicate, Green thoroughly identified himself with Round Hills and its traditions. In a pamphlet issued in 1925 describing "The Voice From Way Down East" he speaks of himself as a descendant of the John Howland to whom the Round Hills tract had originally been allotted (R. 40). At the dedication of the "Morgan" in 1926 he made the dedicatory address, saying, "Our old friend has returned to us, where he will remain for the balance of his time on earth, in our home at Round Hills. Charles W. Morgan, I welcome you home!" (Mass. Ex. 470, Ev. 9736). In 1927, on an anniversary of the town of Dartmouth, he sent a telegram extending his hearty congratulations to Dartmouth and its citizens and welcoming "the people who are perpetuating and continuing the memory of our good old town" (Mass. Ex. 222, Ev. 5296-7, D. 237). He wrote a friend that "Ever since the Pilgrims my address has been as follows: E. H. R. Green, Round Hills Farm, South Dartmouth, Massachusetts" (Mass. Ex. 148, Ev. 5279-80, D. 235). In a letter from the Buie Sanitarium in Texas he wrote to a friend, "* * * I shall start trying to

migrate back to the 'Land of the Pilgrim Fathers' " (Mass. Ex. 205, Ev. 6080-2, D. 280). He employed a local historian and genealogist to write monographs upon different subjects connected with Round Hills, including Gosnold's visit there in 1602, the history of Round Hills farm and its occupants, and the history of the Colonial windmill reconstructed upon the estate (Ev. 6384-7, D. 299).

15. The arguments advanced by the other States against Round Hills as home are without weight.

Several matters are advanced by the other States in their briefs which they claim tend to indicate that Round Hills was not Green's home. We shall consider them here.

1. It is said that the Round Hills house was intended as a monument to his mother and was made so that it could be converted into an institution, and therefore it could not have been intended as a home. This argument the Master has completely answered:

> "As Green and his sister were the last of their line, Green had a plan, which was never matured, to have the house become a memorial of some kind to the Green and Howland families. The house was designed and constructed so that it might be converted into an institution but was designated on the plans, equipped and furnished as a spacious residence, with every household convenience, and was used as such from the time he moved into it until his death" (R. 36).
>
> "But the monumental character of Round Hills does not detract from its serviceability as a residence and it was occupied as such from the time of its completion until Green's death" (R. 56).

New York in its Brief says that the evidence left it uncertain whether the conversion into an institution was to

be during Green's lifetime or afterwards (N.Y. Brief, pp. 58, 59, 62), saying, at page 63:

> "The evidence is to some extent conflicting as to whether Green intended to turn the Round Hills house into an institution during his lifetime or after his death."

This statement is made without any citation of evidence to substantiate it, and we take sharp exception to it. The uncontradicted evidence was to the effect that it might be converted into an institution after his death (Ev. 5710-12, D. 261; 5777-80, D. 264; Ev. 6441, 6447, D. 302; Ev. 6683-4, D. 314; Ev. 6739, D. 317) and discloses no formulation of any definite plans whatever to carry out this intention (Ev. 7837-8, D. 203).

Florida in support of this argument states that "The architect told Mr. Howes, the building contractor, that it was the intention of the owner to use the building for an institution for the public *after he had lived in it for a while*" (Fla. Brief, p. 51; citing D. 175, Ev. 4364). Reference to the transcript discloses that this testimony was struck out as hearsay (Ev. 4364).

2. It is said that Round Hills could not be a home for the reason that the grounds were open to the public.

We have already shown that Green liked to mingle with people, enjoyed having them on his grounds and actually did everything possible to bring them there, by radio broadcasts, throwing open his beaches and giving free admittance to the whaleship "Charles W. Morgan" (Brief, *supra*, p. 13). It must be remembered that after November, 1921, Green himself was unable to get about and mingle with the people elsewhere, and he compensated for this inability by bringing them to him.

The argument that this lack of privacy at Round Hills militates against its being regarded as Green's home fails

signally to take into account the essential character of the man.

An acute observation was made by Mayor Ashley of New Bedford, who testified that Green—

> "said he was getting his money's worth being out and watching them and seeing them and them seeing him. It reminded me of a rich boy that could not play out with the gang and he was looking through a hole in the fence and wanted to get out, and he took this way of bringing them there so he could see them" (Ev. 6460).

3. It is said that the facts that Green's sister had a one-half interest in the one hundred thirty acres which they inherited from their mother and that she continued to pay half the taxes thereon shows that he did not intend it for a home. The answer to this is obvious. Green had no children and no prospect of children. He had a wife, but had cut her off from any share in his estate by an antenuptial agreement. He had made a will under which his sister was the sole beneficiary (Mass. Exs. 58, 56; Ev. 3412, 3382, D. 142). He and his sister were on cordial terms, and it was regarded as desirable not to divide the property inherited from their mother. Under these circumstances, it would have been foolish for Green to take a deed of his sister's undivided half only to devise it to her by will. It was all to Green's advantage that his sister paid half the taxes.

4. It is said that Green's refusal to have his name carved on the house indicates that he did not regard it as home. Having in mind the future destination of the property and the fact that it was intended in the nature of a memorial to his mother, it would have been inappropriate to have his initials placed upon it. But this in no way detracts from

his intention to occupy the house as his home so long as he lived.

5. It is said that Round Hills was situated between two summer colonies, Nonquitt and Salters Point, which are customarily occupied during the summer season, and that Green "spent only the summer season at Round Hills" (N.Y. Brief, p. 66). The fact is, of course, that Green arrived at Round Hills every year as early as July 1st and stayed until late in November or December, except on a few occasions when illness required him to leave earlier (see diagram at end of Brief). The New England summer does not run into the middle of December.

The short answer to New York's argument is that if this was a summer home, by the same token New York was a winter home, and that Green occupied his winter home for a much shorter period than he did his summer home, eventually substituted Star Island in Florida for New York as his winter home, and used New York only as a temporary place of sojourn on his way North and South (see diagram at end of Brief, and R. 33).

So far as Green's summer neighbors at Salters Point and Nonquitt were concerned, he had very little to do with them except to annoy them with his airport and his radio broadcasts and by the public attendance at his beach (Ev. 5632-4, D. 256).

Green chose his associates from the all-year-round people in Dartmouth and New Bedford, and enjoyed popularity with the masses to whom he generously made available the use of his estate (Ev. 5631-2, D. 256; Ev. 4810-13, D. 195).

6. It is said that Green had no sentimental attachment for Round Hills because he let the old Howland house fall into disrepair and used the family graveyard for burying his dog (N.Y. Brief, p. 65). While Green did not keep the house in repair, it was not the home of his parents or immediate family, and had no real value as an antique. As for

the alleged irreverence to his ancestors in permitting his dog to be buried in the graveyard there, this fails to take account of Green's extraordinary affection for his dogs (Fla. Ex. 110, Ev. 8239, D. 351; Tex. Ex. 14, Ev. 887, D. 41). He had his portrait painted with his dog. And the Greens had peculiar notions as to what might properly be buried in their family graveyard. Green's amputated leg was interred in his father's lot in the churchyard at Bellows Falls (Mass. Ex. 169, D. 255).

16. Green began to go to Florida for his health in 1923 and later purchased and reconstructed a club-house on Star Island into a dwelling place which he first occupied in 1927, and thereafter went there for the winter and early spring months, his presence and activities in Massachusetts being undiminished by these sojourns in Florida. Round Hills remained Green's principal home.

Green went to Florida beginning March, 1923 (Mass. Ex. 8), on account of his health, particularly his rheumatic ondition (Mass. Ex. 129, D. 235; Ev. 5276; Ev. 4169, D. 67); and continued in subsequent years to go there for his ealth. He wrote in 1924 that his house boat was "inended on account of my health to be used in southern lorida during the months of January, February and arch" (Mass. Ex. 146, Ev. 6026, D. 276), and in 1926 he eclined an appointment in New York "on account of a rolonged stay in Florida due to ill health" (Tex. Ex. 301, v. 2418).

In 1924 he was there nearly four months, cruising in his use boat, and on the day before his departure purchased small lot of land on an artificial island called "Star and," with a dock to which he could tie up his house boat v. 4997-5000, D. 209). In 1925 he spent about the same riod and bought two additional lots adjacent to the one

purchased in 1924, the whole comprising three acres, on the central lot of which was a club-house which he started to reconstruct into a dwelling house (Ev. 5054-5), living in the meantime on his house boat (Ev. 5056); in 1926 he spent about three months living on his house boat, the Star Island house not yet being ready for occupancy (Ev. 5056-7); in 1927 he spent about three months, for the first time occupying the house (Ev. 5057, D. 213). In 1928 and the following years he spent between four and five months annually in the Star Island house.

Green took no personal and active interest in the remodeling or construction of the Star Island house; was never present during the construction and never conferred with the contractors, in contrast with the vital and constant interest which he took in the construction of Round Hills and its development (Ev. 8063-5, 8096-7, D. 345-6; R. 46).

Green never removed from Round Hills to Star Island any of the household furnishings, library and pictures and personal belongings, which continued to remain at Round Hills until his death (Ev. 5599, D. 253).

While the Star Island house was furnished with costly new furniture, it never contained any keepsakes of his days in Texas, or of his mother, except a small cabinet photograph, or other distinctively personal articles; the *lares et penates* all remained at Round Hills (R. 56).

Green never undertook at Star Island or elsewhere in Florida any scientific experimentation; this was continued solely at Round Hills (R. 47).

Green never accumulated any library in Florida and never manifested any interest in books, historical, geographical or otherwise, dealing with Florida (R. 45, 47, Ev. 5597-9, D. 253).

Green invested nearly $7,000,000 at Round Hills as compared with $1,500,000 at Star Island (R. 56).

17. Green's activities and interests in Round Hills were not diminished, but on the contrary increased after the acquisition of his house at Star Island.

The years during which Colonel Green acquired and developed his Star Island property were not years of diminishing activities at Round Hills, but, on the contrary, were years when he was engaged in great construction projects and increased activities, which continued to about 1933, when a noticeable decline in his health curbed his activities everywhere and prevented his going about and living the active life which he had in former years (Brief, *infra*, p. 36).

It was in 1927, the year he first occupied the Star Island home, that Green began to construct at Round Hills a fully equipped airport with facilities for hydro-aeroplanes as well as land-planes. He obtained a license in 1927 to dredge in Buzzards Bay and to fill solid the tidal tributaries on his property, so as to obtain a dry, level field. In 1928 and 1929 he was principally engaged in this dredging and filling. In 1929 he constructed an airplane hangar and runway for airplanes, and a launchway extending 210 feet into the bay for seaplanes, and continued his work of filling and grading (R. 40).

In 1929 he built a blimp dock. Green himself went up in a blimp in 1930. In 1931 Green gave a reception on the field to Russell Boardman and John Polando. On one occasion he had an airplane meet in the blimp dock for children, at which he gave prizes (Mass. Ex. 437, Ev. 7018, D. 326).

It was during this period that Green was most actively interested in the experiments of the M. I. T. Unit. In 1931 experiments were begun with a high-voltage generator for the disintegration of the atom (R. 40).

Until the fall of 1932 it was his custom to drive into the workshops and watch the experiments being conducted, and after his illness that fall he continued to consult with the professor in charge of the unit. Green continued to

preside at the annual meetings of the Round Hills Radio Corporation and presented reports as to the progress of the work through 1935 (Mass. Ex. 437, Ev. 7019-24).

He added to his Round Hills domain by the purchase of a four-acre tract on August 15, 1927 (Ev. 6363-5, D. 297).

18. Green's interests in Round Hills survived to the end although his activities were curtailed or discontinued everywhere from illness in the last three years. Florida's contention to the contrary is unsound.

Florida claims that Green's domicile was shifted to Star Island because in the later years his interest and activities at Star Island increased and those in Round Hills declined. Florida does not state when they claim this occurred (Fla. Brief, p. 30). We have just seen that it did not occur before 1932 (Brief, *supra*, pp. 35, 36). After 1932 there was a decline of activities in both places due to illness.

In September, 1932, while Green was at Round Hills, he was stricken with a serious heart affliction which required him to seek relief in the higher altitude of Lake Placid, New York (Pascal, Ev. 4151, 4155). From that time on he was in a very weakened and constantly failing condition (Roche, Ev. 7352, D. 107; Pascal, Ev. 4155-8, D. 166; Buie, Ev. 856-886, D. 38-41). In 1935 when he went to the sanitarium at Marlin, he had become so emaciated that he was spared the humiliation of seeing his friends (Ev. 271), his weight shrank from three hundred to one hundred sixty-six pounds (Ev. 8888, D. 376). In 1936 at Star Island he was at times in an oxygen tent (Ev. 7353). Any decline of activities in this period, whether at Round Hills or Star Island, would certainly not be indicative of a loss of interest in either place.

The Master has found that while Green's activities at Round Hills were necessarily curtailed by his illness, his interest survived (R. 43). The evidence supports this finding.

It is significant that Green actually spent among the longest periods of his life at Round Hills in these years. In 1933 he was there from July 1st to December 10th, in 1934 from June 20th to December 16th, and in 1935 from June 18th to November 23d. If, as Florida argues, Green had lost all interest in Round Hills and wanted to be only at Star Island, there was nothing which would have prevented it in this period.

Florida's bald assertion (Fla. Brief, p. 34) that from 1928 to June 8, 1936, Green spent more time in Florida than in Massachusetts results from the fact that Florida takes a period of eight and one-half years, and the final half year Green spent in Florida and died before going to Massachusetts. If we take the period year by year, the preponderance of time is in favor of Massachusetts (see diagram at end of this Brief).

The fact that Green installed in the Round Hills House in 1935 a complete new oil heating system (Ev. 6902, D. 327, R. 37) surely indicates that he was keeping the house comfortable for continued occupation into the cold months as usual.

A vivid intimate portrait of Green's life at Round Hills in these later years was given by his Massachusetts protegée, Eileen Stephenson, who was very close to him in that period (Ev. 6305-6330, D. 294-6).

It is true that from 1934 Green could no longer enter the laboratories at Round Hills to watch the activities of the Technology unit, but he did continue to permit them the use of his facilities throughout his life, and manifested an undiminished interest in the reports that were brought to him of their activities (Bowles, Ev. 6830-5, D. 321-3).

The airport was kept in A1 condition until Green's death (Ev. 6889-91, D. 325). Even Vander, upon whose testimony Florida relies to show a lack of interest (Fla. Brief, p. 31), conceded that Green's interest in the airport survived until 1934 (Vander, Ev. 7118-19).

As to the farm, in which Florida claims that Green lost interest because he did not replace two horses that died in 1934 and two more in 1935, saying that he was planning to motorize the place (Ev. 7094, D. 340), the farm superintendent whose testimony is relied on indicated that the farm was kept up in every department, vegetables, hay, cattle, land, greenhouse, 150 acres of land in working order, vegetables taken to the mansion, some thirty or forty goats maintained, which increased rather than decreased in number; eight cattle whose milk was used for the house, and some forty men employed on the farm throughout the summer, and twenty-two in the winter (Tulloch, 7094-5, D. 340).

Florida's claim that Green's abandonment of radio broadcasting in 1927 indicated a loss of interest in Round Hills is not well taken. As the Master correctly found, "At the end of 1927, when broadcasting became commonplace, he lost his interest *in this phase* of radio and devoted his attention to it as a means of communication, etc." (R. 40).

Florida's statement that his golf course was abandoned is also without significance. The testimony was that Green had a few holes with flags in them, but the golf course was never developed (Bullard, Ev. 7034). It was necessarily given up when he made use of the ground for the airport in 1929. Far from indicating an abandonment of Round Hills, it indicated an intention to put it to a use which meant very much more to Green than a golf course which he could not play on.

Florida claims that Green's interest in and contributions "to charitable organizations" in Massachusetts declined,

but that in Florida his interest in and contributions "to religious and charitable organizations" continued. To support this exception they list contributions to those limited classes of philanthropic organizations. The classification which they use overlooks the bulk of Green's philanthropic contributions during the period. The total philanthropic contributions made by Green to all organizations in Massachusetts after 1928 was $100,305 (D. 144), and to all philanthropic organizations in Florida $18,343 (D. 146-7). These Massachusetts contributions of $100,305 do not include contributions of $99,661.18 made to Whaling Enshrined or over $750,000 to Round Hills Radio Corporation after 1928 (D. 148).

Green's resignation from the Wamsutta Club as a gesture of protest over the expulsion of a friend (Ev. 5633-4, D. 256), and his resignation from the New Bedford Country Club in the same year can hardly be taken as evidence of loss of interest in Round Hills as a home, particularly since he never went to any of the clubs he joined anywhere (R. 20, Ev. 5449-50, D. 247, and Ev. 5634).

If we turn from the consideration of Green's activities at Round Hills to those at Star Island after 1932, we find a like situation. Of course there was not the same cessation from activities because Green never had any activities there as he did at Round Hills. But if we may consider his boats as a recreational activity, we find that they were no longer in use. In 1934 he sold the show-boat "The Colonel," which was formerly tied at his dock, where it was used for entertainment. His three other boats, a speed boat, a tug boat and a gondola, after 1932 were left in storage except when removed for reconditioning (Ev. 8649-52, D. 365-6), and from 1929 Green was rarely if ever on any of them (Ev. 5610, D. 255; Mass. Ex. 265, Ev. 5608, D. 254). Mayor Sewell of Miami, who appears to have been as close to Green as any one in Miami, said that "the last

couple of years that he lived, I do not think but very few people seen him. We would hear from him but he was a sick man" (Sewall, Ev. 8294-5); and beginning in 1931, as Green's health failed, Sewell saw him less frequently (Ev. 8294-5).

We have searched the record and Florida's Brief in vain for any evidence of activities on Green's part in Miami after 1932, except the usual routine which he followed in both Miami and Round Hills of working on his stamp and numismatic collections, riding in his automobile, passing the time of day with the shopkeepers and sitting still.

Although in common with Florida's thousands of winter visitors Green enjoyed the warm sunshine, he never gave up Round Hills as his permanent, real and principal home, where his roots were so deeply embedded in a soil to which his New England heritage made him indigenous. The Master correctly found that Round Hills "was not only the earlier home but * * * it was the principal, predominant and permanent home" (R. 56).

Green was on his way to Round Hills when he died. In April, 1936, Star Island house was closed, and when Green left for Lake Placid in the hope of regaining his health, the staff of servants were sent to Round Hills to prepare for his homecoming (D. 330). On June 8th he died and on the 10th his funeral services were held at his home at Round Hills.

19. Conclusion.

As stated in the Restatement of the Law of Conflict of Laws (quoted in Brief, *infra*, p. 43), it is "the intimacy of the relation" between a person and a place which distinguishes a home from a dwelling.

The intimacy of Green's relation to Round Hills, taken in conjunction with the fact that he there surrounded him-

self with the mementos of the life of his ancestors who had continuously for over two centuries resided at Dartmouth and New Bedford, indicated that the things which he cherished at Round Hills truly constituted, figuratively speaking, his household gods. For the last fifteen years of his life his *lares* and *penates* continuously remained at Round Hills. There was the true center of his affairs. The things he had there, and the things he did there reflected the real things which interested him. Round Hills became, and remained until his death, the headquarters of those interests and activities of Green which to him were most important. There was his principal habitation, his one real home, and his domicile at the time of his death.

Discussion of Law.

What we shall undertake to establish is briefly this:

Domicile as applicable to domicile of choice is at the place of a man's home. If he has more than one home, it is at the principal home. Principality of home is not dependent on order of acquisition, except where the homes are of equal degree. When a man establishes such a home *animo et facto*, that is his domicile irrespective of his desire that it should be elsewhere.

1. Domicile as Home.

The American Law Institute defines domicile as follows:

> "Domicil is the place with which a person has a settled connection for certain legal purposes, either because his home is there, or because that place is assigned to him by the law."
>
> Am. Law Inst., Conflict of Laws, sec. 9.

The identity of domicile with home is remarked by Professor Beale, who says:

> "The term 'domicil' is derived from the Latin word meaning home, and the fundamental significance of home may be said to have fixed the fundamental meaning of domicil: 'By domicil we mean home, the permanent home; and if you do not understand your permanent home, I am afraid that no illustration drawn from foreign writers or foreign languages will very much help you to it.'"
>
> I Beale on Conflict of Laws, p. 94, sec. 9.5, quoting from Cranworth, L.C., in *Whicker* v. *Hume*, 7 H.L.C. 124, 159-160.

2. Domicile as Principal Home.

Where a person has a home, and only one home, his domicile is there.

If, however, a person has a plurality of habitations, his domicile attaches to the one which is his principal establishment or headquarters.

This Court in *Williamson* v. *Osenton*, 232 U.S. 619, 625, speaking through Mr. Justice Holmes, has laid down the principle:

> "The very meaning of domicil is the technically *preeminent headquarters* that every person is compelled to have in order that certain rights and duties that have attached to it by the law may be determined."

And this accords with the classic statement of Judge Story:

> "that is properly the domicile of a person where he has his true, fixed, permanent home and *principal establishment*, * * *"

Story, Conflict of Laws (8th ed.), pp. 40, 41.

The phrase "principal establishment" employed in Judge Story's definition expresses the same thought, if indeed it is not synonymous with the phrase "preeminent headquarters" employed by Mr. Justice Holmes in *Williamson* v. *Osenton, supra*, and with the phrase, "principal home," which is adopted by the American Law Institute, and by Professor Beale.

The American Law Institute incorporates the idea in its definition of home, saying:

> "A home is a dwelling place of a person, distinguished from other dwelling-places of that person by the intimacy of the relation between the person and the place."

Am. Law Inst., Conflict of Laws, sec. 13.

"Domicile of choice is a conclusion or inferen which the law derives from the fact of a man fixi voluntarily his *sole or chief residence* in a particul place, with an intention of continuing to reside the for an unlimited time."

Lord Westbury in *Udny* v. *Udny*, L.R. H. of L (Scotch) 441 (1869).

Accord:

Thayer v. *Boston*, 124 Mass. 132, 135-140.
Am. Law Inst., Restatement of the Law of Con flict of Laws, secs. 15 (4), 24;
I Beale, Conflict of Laws, secs. 24.1 to 24.4.

In dealing with plurality of habitations, two methods of expression have been employed. It may be said that one of the habitations is a home and the others mere dwelling places. This was the method employed by the New York Court in *Matter of Harkness*, 183 App. Div. 396; 170 N.Y. Supp. 1024. Or it may be said that one of the habitations is the principal home and the others mere subordinate or secondary homes. This is the method employed by the American Law Institute in its Restatement of the Law of Conflicts, secs. 13, 15, 24. This is, however, a matter of terminology.

3. Principality of Home Not Dependent upon Priority of Acquisition.

The concept of domicile as the principal home or "pre-eminent headquarters" carries with it the corollary that a residence which has become subordinate or secondary will not persist as the domicile. If it did, there would be no occasion to talk about principal home, because the first in order of occupation would always prevail.

It is only when the homes are of equal degree that the earlier in point of time is the legal domicile.

> "When a person who has capacity to acquire a domicil of choice has more than one home, his domicil is in the earlier home, unless he regards the second home as his principal home."
>
> Am. Law Inst., Conflict of Laws, p. 48, sec. 24.

> "Where there are two actual and equal homes, the earlier in point of time is the legal domicil."
>
> I Beale on Conflict of Laws, p. 191, sec. 24.3.

> "Domicil answers very much to the common meaning of our word home, and where a person possesses two residences, the phrase 'he made the latter his home', would point out that to be his domicil."
>
> Phillimore's Law of Domicil, p. 18.

The question, then, as between two or more homes is not priority but principality, and because this is so the inquiry must be directed to the point whether fact and intent concur to make a later home the principal one, rather than to whether the former home has been abandoned. *Ex hypothesi* the earlier home is not completely abandoned; it is merely abandoned as principal home.

This has been explicitly recognized in the more recent cases.

> "Sometimes the animus is treated as involving two separate intentions, one to abandon the old location, and one to abide in the new. *If the last intention be*

formed, it necessarily includes the other. * * *"* (Italics the Court's.)

Ford v. *Peck,* 116 Kan. 74, at 76.

"It is argued by appellees that before a new domicile of choice can be acquired there must be proof of the abandonment of the old. In our opinion this contention is unsound, for the intention to make one's home in a new place necessarily includes the abandonment of the former home."

Dorrance's Estate, 309 Pa. 151, at 172.

"The intention which is significant in effecting a change of domicile is the intention to acquire a new home rather than an intention with reference to an old home."

Atwood v. *Atwood,* Mass. Ad. Sh. (1937) 763, 766; 8 N.E. (2d) 916, 918.

And see:

Feehan v. *Tax Commissioner,* 237 Mass. 169, at p. 171.

Thayer v. *Boston,* 124 Mass. 132, at p. 137, extract from charge approved on appeal by the Supreme Judicial Court.

Shaw, C.J., in *Abington* v. *North Bridgewater,* 23 Pick. (Mass.) 170, at p. 178.

Matter of Harkness, 183 App. Div. 396, 398; 170 N.Y.S. 1024.

Commissioner ex rel Fortney v. *Bobrofskie,* 329 Pa. 44.

"It is not necessarily true, however, that a man who maintains two well-equipped places of residence

has two actual homes; for he may regard one as rather a convenient temporary stopping place than as a home"

I Beale on Conflict of Laws, p. 187, sec. 24.2.

The Master's finding that Green's New York apartment for many years prior to his death was occupied by him for brief periods in the spring and fall while en route from Massachusetts and Florida (R. 54) and during the last ten years was used as a mere "temporary sojourning place" on his trips North and South (R. 33) brings New York within the situation described.

Upon these findings it is really not necessary to consider, as between New York and Massachusetts, which of two homes was the principal one, for the Master has found that the New York apartment had become a place of mere temporary sojourn. We are aware of no cases which would sustain New York as the domicile upon these findings.

The fact that Massachusetts was what New York calls a "summer home" does not militate against its being the predominant and principal home.

Where a man has seasonal homes, the one which is his principal home becomes the place of domicile.

"* * * if a married man has two places of residence at different times of the year, that will be esteemed his domicil which he himself selects, or describes, or deems to be his home, or which appears to be the centre of his affairs * * *"

Story on Conflict of Laws (8th ed.), p. 52, sec. 47.

"There is no evidence of any intention to remain in Boston beyond the winter months. On the contrary, the intention to return to the testator's country seat in the spring, ought to be inferred from the uninterrupted

practice for five years before." [Holding the country seat to be the domicile.]

Parker, C.J., in *Harvard College* v. *Gore*, 5 Pick. (Mass.) 370, 375.
Somerville v. *Somerville*, 5 Ves. 750, 788-790.
McHenry v. *State*, 119 Miss. 289.
I Beale on Conflict of Laws, p. 189, sec. 24.2.

4. Domicile is Where a Person Chooses to Make his Home, Not Where he Chooses to Make his Domicile.

It is of course implicit in the concept of domicile which we have been considering that a person chooses where his home or principal establishment is to be, upon which the law fixes upon that place as his domicile. A man cannot elect to make his home in one place for the general purposes of life and in another for the purpose of taxation. It is this element of our definition which becomes operative in considering Texas' claim.

The rule has been frequently stated:

"* * * When you intend the facts to which the law attaches a consequence, you must abide the consequence whether you intend it or not."

Dickinson v. *Brookline*, 181 Mass. 195, 196 (opinion by Holmes, C.J.).

"* * * a man cannot retain a domicil in one place when he has moved to another and intends to reside there for the rest of his life, by any wish, declaration or intent inconsistent with the dominant facts of where he actually lives and what he actually means to do."

National City Bank v. *Hotchkiss*, 231 U.S. 50, 56; citing, with approval, *Dickinson* v. *Brookline*, *supra*.

"* * * a man cannot elect to make his home in one place for the general purposes of life, and in another place for the purposes of taxation."

Feehan v. *Tax Commissioner*, 237 Mass. 169, 171.

"* * * a man's home is where he makes it, not where he would like to have it."

Kerby v. *Charlestown*, 78 N.H. 301, 307.

"The intention required for the acquisition of a domicil of choice is an intention to make a home in fact, and not an intention to acquire a domicil."

Am. Law Inst., Conflict of Laws, sec. 19.

Accord:

Dicey, Conflict of Laws (5th ed.), p. 91.
VI Halsbury, Laws of England (2d ed.), p. 202.
I Beale, Conflict of Laws, p. 150, sec. 19.2.
Matter of Trowbridge, 266 N.Y. 283.
Rosenberg v. *Commissioner of Internal Revenue*, 37 Fed. (2d) 808.

APPLICATION OF LEGAL PRINCIPLES TO THE FACTS.

The principles which we have just discussed are determinative of the claims of the several States:

1. Massachusetts prevails as the State of Green's domicile because it was Green's "principal, predominant and permanent home" (R. 56).

2. Texas fails because Green abandoned his Texas home (R. 52), and made his home in Massachusetts, claiming a residence in Texas only for purposes of taxation (R. 52).

3. New York fails because Green lacked the intent "to settle down in a home" there (Beale, Conflict of Laws, vol. I, page 148), but even if the intent had originally existed, New York eventually ceased to be a home and became a mere place of temporary sojourn (R. 33).

4. Florida fails because Massachusetts became and remained the "earlier, predominant and principal home" while Florida, if a home at all, was a later and subordinate home (R. 57).

The Master's Report and recommendation for a decree adjudicating Green's domicile in Massachusetts at the time of his death on June 8, 1936, should be adopted.

Respectfully submitted,

For the Commonwealth of Massachusetts,

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By EDWARD O. PROCTOR,

Assistant Attorney General.

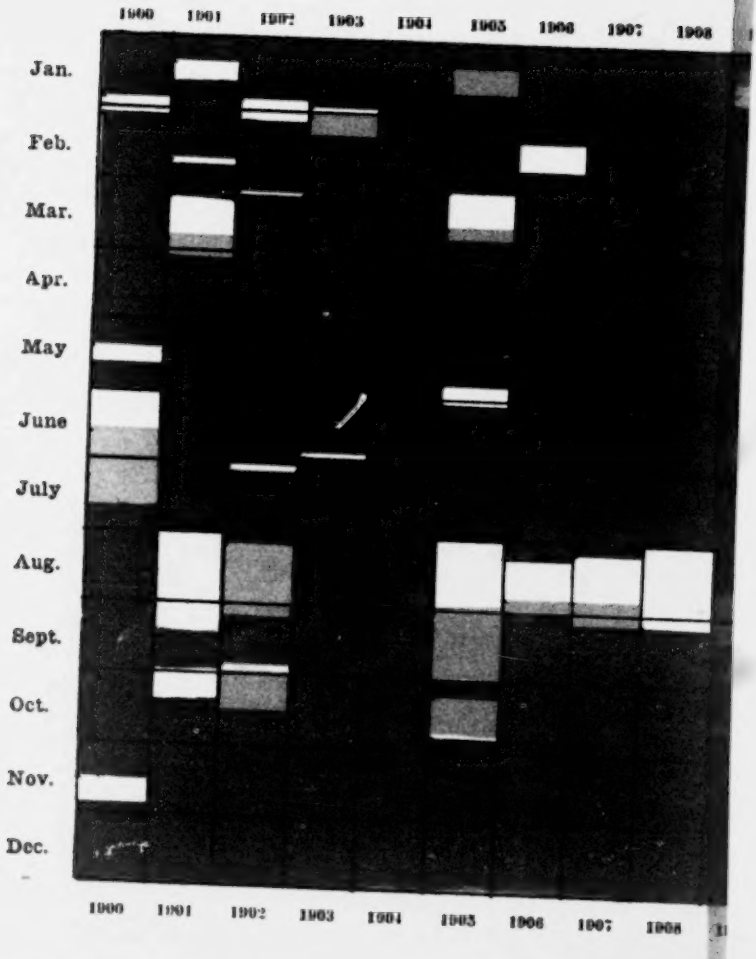
HENRY F. LONG,

Commissioner of Corporations and Taxation.

T. LUDLOW CHRYSTIE,

Special Counsel.

Dated, January 30, 1939.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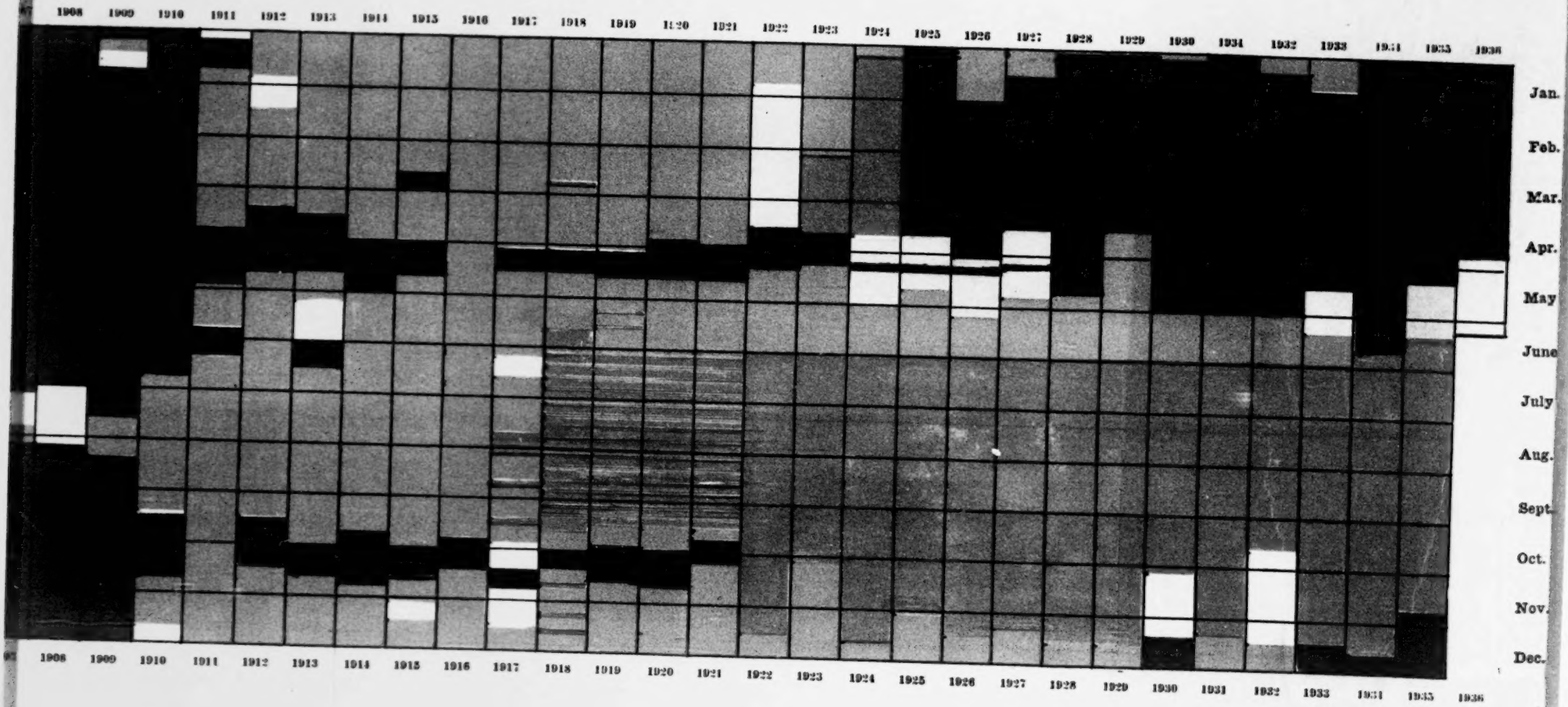
GEOGRAPHICAL CHART

OF THE LIFE OF

EDWARD H. R. GREEN

FROM JANUARY 1, 1900 TO JUNE 8, 1936



KEY

- Dallas, Terrell and neighboring cities, Texas.
- New York City.
- South Dartmouth, Mass.
- Star Island.
- Florida, at Jacksonville, Miami, Miami Beach and vicinity.
- Marlin, Texas.
- Miscellaneous (St. Louis, Mo.; Bellows Falls, Vt.; Boston, Mass.; Chicago, Ill.; San Francisco, Cal.; Asheville, N. C.; Lake Placid,

JAN 31 1939
CHARLES ELMORE CROPLEY

Supreme Court of the United States.

October Term, 1938.

No. 11, Original.

The State of Texas,

Complainant,

v.

The State of Florida et als.,

Respondents.

APPENDIX TO BRIEF FOR THE RESPONDENT COMMONWEALTH OF MASSACHUSETTS.

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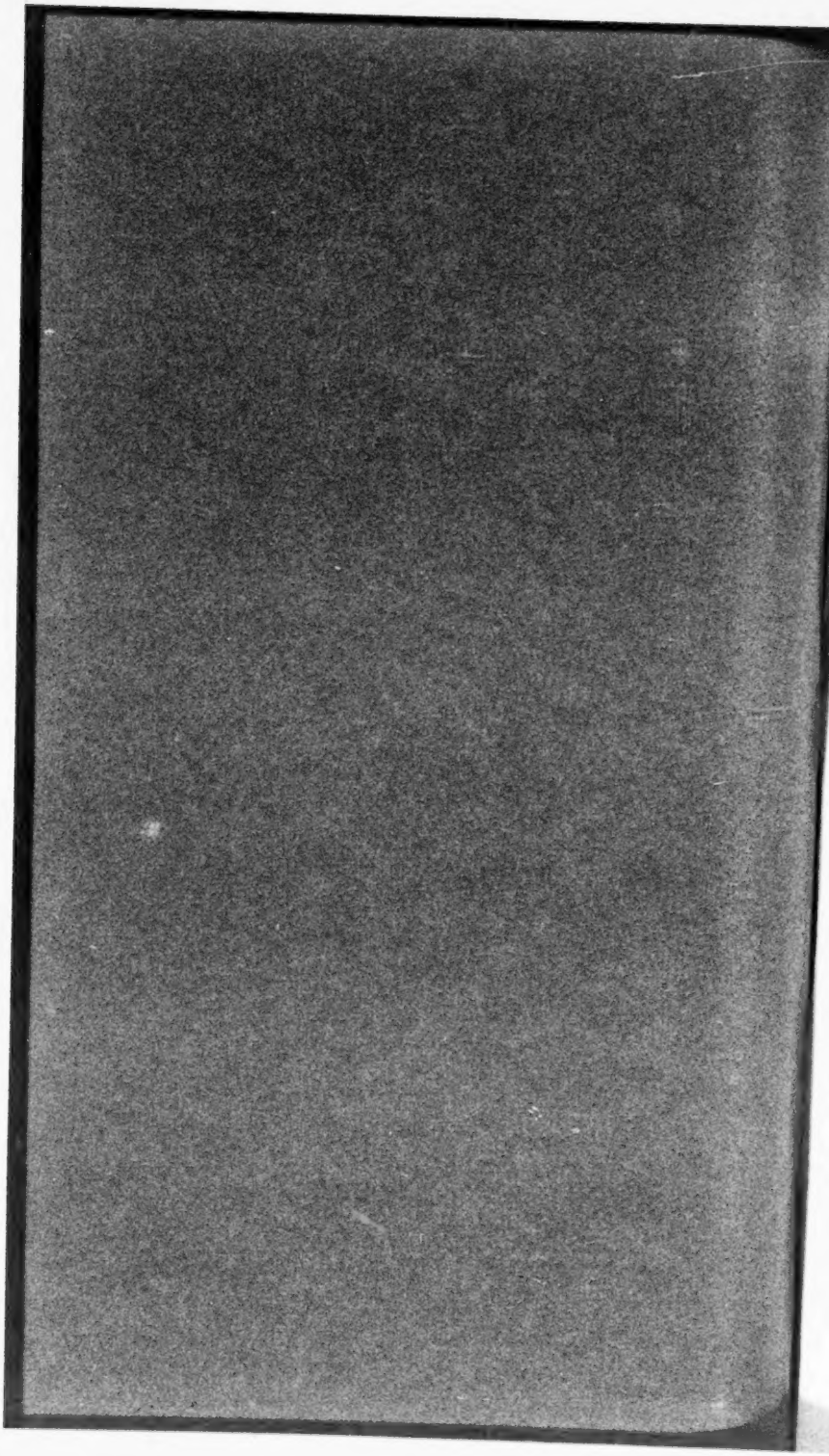

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Supreme Court of the United States.

OCTOBER TERM, 1938.

No. 11, ORIGINAL.

THE STATE OF TEXAS, *Complainant*,

v.

THE STATE OF FLORIDA ET ALS., *Respondents*.

APPENDIX TO MASSACHUSETTS BRIEF.

1. Statement of facts supporting the findings for Massachusetts, with references to supporting evidence.

2. Reprint of Master's Findings of Fact with passages excepted to italicized and commented on.

FOREWORD.

This appendix contains two sections:

First is a comprehensive statement of the facts upon which Massachusetts rests her claim to domicile, cross-referenced to the Master's Report ("R."), and fully documented with references to the Master's Digest ("D."), the stenographer's transcript of the evidence ("Ev.") and the exhibits ("Ex."). This was prepared to assist the Court in such inquiry as it may make as to whether the evidence supports the Master's findings for Massachusetts.

Second is a reprint of the Master's findings of fact (R. 19-57), in which every passage excepted to is italicized, and the exception is followed by our appropriate comment. This will enable the Court to see at a glance the extent to which the report is unchallenged and the value to be attached to the exceptions.

Part I.

Statement of Facts Supporting the Findings for Massachusetts, with References to Supporting Evidence.

Death of Mrs. Hetty Green and Green's Release from New York.

1. From his school days up to the time of his mother's death, Green had been continually in his mother's employment and under her domination, at first attending to her properties in Chicago, then to the management of her railroad in Texas (R. 23) and finally assisting her in the care of her property in New York (R. 29, 30, 51). Throughout this period his successive places of abode in Illinois, Texas and New York and to a large extent the general conduct of his affairs were the result not of his own free choice but of his mother's wishes. She was a woman of extremely dominating character, of whom Green lived in fear and respect combined with unusual filial affection.

Had been in his mother's employment and under her domination from his school days: in Chicago, Texas Ex. 288 (Ev. 2332-3; D. 66); in Texas, McKay, Ev. 578; D. 24; Mangels, Ev. 8457-8; D. 360; Mass. Ex. 67 (Ev. 5843-5; D. 268); in New York, Texas Ex. 288 (Ev. 2336-7; D. 65-6); Mass. Ex. 3 (Ev. 119; D. 7); Potter, Ev. 3103; D. 124-5; Tucker, Ev. 8839; D. 372.

Fear, respect and affection for his mother: Corley, Ev. 323-4; D. 15; McDonald, Ev. 461-4; D. 19; Stafford, Ev. 5004; D. 210.

2. Upon his mother's death in July, 1916, Green for the first time was emancipated from her control and influence (R. 35) and came into his fortune (R. 51). Within a month he moved the office from the 7 West 90th Street house, where his mother had maintained it, to an up-to-date office suite at 111 Broadway (R. 28, 29). He continued to live in the house at 5 West 90th Street for a year, but after July, 1917, he was there only four weeks and in January, 1918, he moved to a furnished suite at the Waldorf-Astoria (R. 29, 32). He moved none of his furniture, pictures or furnishings from

the house to the apartment, but kept them stored until 1921, when most of them were sent to Round Hills (R. 29, 54). The rest of them were sent to Round Hills in 1928, when the 5 West 90th Street house was demolished.

Moved office August 1, 1916; N.Y. Ex. 1 (Ev. 378; D. 16).

After marriage, lived on yacht and spent only about four weeks in 5 West 90th Street: Mrs. Holcinger, Ev. 2925, 2972; D. 111, 114; Stafford, Ev. 4954-5; D. 206-7.

Moved no furniture, etc., to Waldorf in 1918, but transferred it to Round Hills in 1921 and 1928: Berglund, Ev. 5665-6; D. 257; Mrs. Holcinger, Ev. 2935, 2963-9; D. 112, 114; Van der Putten, Ev. 4335-8; D. 174.

3. Within a few months after his mother's death Green purchased a Great Lakes steamer, brought it to the Atlantic seaboard, had it cut in two, lengthened fifty feet (R. 29), and converted into the largest private yacht in the world. This yacht, the "United States," carried a crew of seventy-two officers and men (R. 29). When Green was in New York during the latter half of 1917, instead of living in the house at 5 West 90th Street he lived on the yacht, which he had anchored off West 86th Street in the Hudson River (R. 32).

Yacht: purchased in 1916, as soon as Green could after his mother's death, Fla. Ex. 2 (Ev. 3488; D. 150); Marshall, Ev. 5353; D. 241; steamer lengthened and converted, Marshall, Ev. 5353-4; D. 241; redecorated and furnished, Van der Putten, Ev. 4320-1; D. 172.

Crew of seventy-two men: Bennett, Ev. 6787-8; D. 320.

Stayed on yacht instead of in 5 West 90th Street: Stafford, Ev. 4954-5; D. 206-7; Mrs. Holcinger, Ev. 2925, 2972; D. 111, 114; off Columbia Yacht Club, Bennett, Ev. 6781; D. 319; at 86th Street and the Hudson, N.Y. Ex. 50 (Ev. 3272; D. 133).

4. Released by the death of his mother and by the inheritance of his fortune (R. 35, 51), there was nothing to keep Green in New York (R. 54) except his duties in connection with the probate and administration of her estate, of which he was sole executor (R. 22, 29). Her will was admitted to probate in Bellows Falls, Vermont, but administration was delayed by lengthy litigation in which Green contested the claim of New York State for transfer inheritance taxes—a

matter that required two separate trials, with Green as the chief witness for the estate. With this litigation won, however, and with the trusts under his mother's will established, Green was finally his own master. Within eighteen months of Mrs. Hetty Green's death, he had become the owner of the largest yacht in the world, married, closed the house in New York City (R. 29), where he had been living for years (R. 28, 29), and had started developments on a grand scale for the establishment of a home and country estate in Massachusetts (R. 35, 51, 52).

Mrs. Hetty Green's estate: Green sole executor, Texas Ex. 288 at Ev. 2331; (D. 65-6); trials, Texas Ex. 288 (Ev. 2326-46; D. 65-73); N.Y. Ex. 224 (Ev. 7698-7701; D. 196); statements of counsel, Ev. 2311-12.

Green's Attitude towards New York.

5. Except possibly at the very beginning of his stay in New York Green showed no interest or ambition in business or finance (R. 21). Familiarity with the competitiveness of Wall Street life and the difficulties of attaining success and prominence gave Green a distaste for life in New York, and for the people who lived there (R. 31, 54).

No interest in finance: Potter, Ev. 7861-3; 7865-8, 7886-7; D. 403-5.
Disliked competitiveness of New York business: Corley, Ev. 282; D. 12; McKay, Ev. 661; D. 29-30; Tucker, Ev. 8839; D. 372.

6. Green's attitude towards New York became more and more detached beginning with the death of Mrs. Hetty Green, increasing with Green's marriage, and culminating with his occupancy and development of the property at Round Hills (R. 28, 29, 35).

See references under paragraphs 1-4, inclusive, 11 and 26-47, inclusive.

7. Finally, during at least the last ten years of his life, Green regarded his apartment in New York as merely a stopping-off place on his trips North and South (R. 33). It

contained only the portion of his stamp collection which he had allowed to remain static since 1927, some cast-off clothes of Mrs. Green's, and a few personal belongings of his, worth less than a thousand dollars (R. 33, 34).

New York City became merely a stopping-off place: J. O. Green, Ev. 3026; D. 118; Lincoln Brown, Jr., Ev. 8389; D. 356; Cleary, Ev. 9478-9 (1930); D. 395; Newington, Ev. 2766-7; D. 91; see also Strandell, Ev. 9687-9; D. 405, and the following exhibits:

"* * * only temporary and is used only for a short time between my summers in Massachusetts and winters in Florida."—Letter from Green at Round Hills in 1931, Mass. Ex. 313 (Ev. 5331-3; D. 239).

"My visits to New York are rather infrequent of late and of short duration * * *."—Letter from Green at Star Island in 1930, Mass. Ex. 279 (Ev. 5317; D. 238).

"May 15 * * * at which time I expect to be *returning from the south on my way to South Dartmouth.*"—Letter from Green at Jacksonville to Chase in New York in 1923, Mass. Ex. 138 (Ev. 6000-1; D. 275).

"* * * the first of June, when I shall *start trying to migrate back* to 'The Land of the Pilgrim Fathers.'"—Letter from Green in Marlin in 1926, Mass. Ex. 205 (Ev. 6080-2; D. 280).

"* * * until I get back to South Dartmouth, which will be at the *earliest date I can get there.*"—Letter from Green in Marlin in 1925, Mass. Ex. 197 (Ev. 6071-2; D. 280).

"Unfortunately for me, I am expecting to go away tomorrow on a trip south, to see if I can boil out the little rheumatism that is left in me. My address for the next two weeks will be Waldorf-Astoria * * *."—Letter from Green at Round Hills, December 16, 1922, Mass. Ex. 129 (Ev. 5277-8; D. 235).

"I am leaving here in a few days for New York, but during my short stay there will not have time to go into anything in the numismatic line. I am sending all your shipments direct to South Dartmouth * * *."—Letter from Green at Star Island in May, 1928, Mass. Ex. 240 (Ev. 6098-9; D. 282).

Stamp collection static since 1927, Potter, Ev. 3581; D. 157.

Contents of Sherry-Netherland suite: appraisal of personal effects, furniture, etc., $882, Texas Ex. 321 (Ev. 2518-23; D. 76); Green's letter to Pierson in October, 1932, Mass. Ex. 329 (Ev. 5188-9; D. 228); stamp collection in New York was "given up" prior to 1934, Mass. Ex. 342 (Ev. 5323-5; D. 239); Potter, Ev. 3581; D. 157; Marshall, Ev. 5387; D. 243.

Green's Marriage and Establishment of a Home.

8. Within a year after his mother's death, Green married Miss Mabel Harlow at Highland Park, Illinois, in July, 1917 (R. 22, 29). In the following month Green and Mrs. Green sailed in the "United States" to Buzzards Bay and an-

chored off Round Hills Farm, a property which Green and his sister had inherited from their mother (R. 19, 35).

Marriage: Announcement, N.Y. Ex. 2 (Ev. 380; D. 16); Stafford, Ev. 4954; D. 206; Marshall, Ev. 5354; D. 241.

Sailed to Round Hills: Davis, Ev. 6512, 6527; D. 305-6; Stafford, Ev. 4955; D. 207; Marshall, Ev. 5355; D. 241; Mass. Ex. 69½ (Ev. 5226; D. 232).

9. Green had been to Round Hills before, when, as a boy in his 'teens, he had spent two summers there with his mother and sister. It was a seacoast property of approximately 130 acres located in South Dartmouth, Massachusetts, about eight miles from New Bedford (R. 35). This land had been in the ownership of Green's Howland ancestors for over two hundred years (R. 19, 35), from the time of the original Indian grants (R. 19), and was known to Green, and habitually referred to by him, as his ancestral estate. The only structures then on the property were the old Howland homestead, a barn, workshop, corn crib and sheds (R. 35).

Green at Round Hills as a boy: Peckham, Ev. 6374-5; D. 298; Davis, Ev. 6528-9; D. 306; Berglund, Ev. 5717; D. 262.

Acreage and ownership: McLeod, Ev. 6343-8; D. 296; corrected as to acreage, Ev. 6559-61.

Ancestral estate: Berglund, Ev. 5717; D. 262; Marshall, Ev. 5350-1; D. 251; Mass. Exs. 148 (Ev. 5278-80; D. 235), 198 (Ev. 6073; D. 280); and 246 (Ev. 6109-10; D. 283); McKay, Ev. 711, 756, 806; D. 32, 34, 35; Corley, Ev. 322; D. 14; Wells, Ev. 244-5; D. 9; Kiest, Ev. 1223; D. 53; Emery, Ev. 6382, 6384; D. 298; Carlson, Ev. 5860; D. 269; Stafford, Ev. 4956-7; D. 207.

Buildings on property: Peckham, Ev. 6377-8; D. 298.

10. On the visit which Green made in August, 1917, he determined to develop the property into a great country estate and to build there his permanent home. Forthwith he gave orders designed to carry this plan into effect. Then, and on several return visits that fall, Green gave orders for the construction of an 800-foot wharf, a breakwater and a 50,000-gallon water tank with pump house and windmill for the "United States"; a greenhouse, two

gardeners' cottages (R. 35), and bath houses on the bathing beach (R. 36). The construction ordered at that time cost about $80,000 to $90,000. He had adjoining properties surveyed and titles examined, with a view to their purchase, and conferred with an interior decorator regarding the decorations for his future Round Hills home (R. 35). He employed a gardener and gave directions for clearing and grubbing the property for cultivation. After Green had done these things, he and his wife and Mrs. Stafford late in October sailed in the "United States" to Galveston, Texas (R. 29), returning to New York in the middle of December.

Determination to build home at Round Hills: Marshall, Ev. 5355-6; D. 241; 5468-9; D. 248; Stafford, Ev. 4956; D. 207; and the following exhibits:

"Permit me to confirm a conversation I had with you some time ago, Regarding the future decorations you may require for your new Home Round Hills New Bedford Mass."—Letter of October 20, 1917, Van der Putten to Green, Mass. Ex. 426 (Ev. 6602-3; D. 308);

"I hope some time to make Massachusetts my home * * *."—Letter of Oct. 28, 1918, Green to Mass. Fuel Admr., Mass. Ex. 77 (Ev. 5234-7; D. 232);

Intention to make Round Hills a show place, letter Green to Prescott, Mass. Ex. 86 (Ev. 5245-9; D. 233);

"* * * my intentions are to remain with you * * *."—Letter of May 20, 1921, to the Assessors of Dartmouth, Mass. Ex. 110 (Ev. 5123-5; D. 218-9).

Construction work ordered: Taylor, Ev. 6984; D. 328; Davis, Ev. 6512, 6518, 6534-5, 6536-7; D. 305-6; Potter, Ev. 3556; D. 155-6; Mass. Ex. 419 (Ev. 6514-16; D. 305); Mass. Ex. 420 (Ev. 6519-22; D. 305); Mass. Ex. 421 (Ev. 6524; D. 306); Mass. Ex. 422 (Ev. 6526-7; D. 306); Mass. Ex. 423 (Ev. 6530-4; D. 306).

Employed gardener, etc.: letter Green to Davis, Mass. Ex. 422 (Ev. 6526; D. 306); Davis, Ev. 6527-8; D. 306; Marshall, Ev. 5563-4; D. 252.

11. In the years 1918 to 1921 Green was principally employed in the development of the Round Hills estate and adjacent harbor facilities and the planning, construction and furnishing of his home (R. 35). He was eager for the speedy completion of the work but was delayed by war conditions. In June, 1919, Mrs. Green performed the ceremony of turning the first spadeful of earth for the foundation of the new home (R. 35). During its construction Green was constantly in and about the work, observing the workmen and

attending to the most minute details (R. 35, 46). In 1918 and the two following years he spent from the first of July to the middle of October in the vicinity of Round Hills. While there he lived on the yacht "United States" in 1918 and again in 1919 (R. 29) until she sank in August (R. 35). For the balance of that season he stayed near by at the Tabitha Inn in Fairhaven, Massachusetts. In 1920 he lived on the houseboat "Day Dream," which was kept continuously in Padanaram Harbor adjacent to Round Hills (R. 29, 35). During these years he also made several trips of a few days' duration in the spring and fall in order to observe the progress of the work (R. 35). Before the house was ready for occupancy Green had spent $1,500,000 in the development at Round Hills, of which $750,000 had gone into the construction and furnishing of the house (R. 42). In July, 1921, the house was ready for occupancy and Green and Mrs. Green moved in (R. 35).

Green's interest in and occupation with details of developments at Round Hills, 1918-1921: Davis, Ev. 6539-58; D. 306-7; Sullivan, Ev. 7560-1; D. 333-4; Harris, Ev. 6627-30; D. 310; Berglund, Ev. 5669-70, 5673; D. 257-8; letters between Green and Bossom, Mass. Exs. 92 (Ev. 5920-3; D. 271), 445 (Ev. 7490-3; D. 330), 446 (Ev. 7493-4; D. 330), 449 (Ev. 7510-14; D. 330), 450 (Ev. 7516-20; D. 330), 451 (Ev. 7523-4; D. 331), 452 (Ev. 7524-30; D. 331), 453 (Ev. 7530-5; D. 332), 454 (Ev. 7535-8; D. 332), 455 (Ev. 7538-41; D. 332), 456 (Ev. 7541-4; D. 332), 457 (Ev. 7545-6; D. 332), 458 (Ev. 7547-8; D. 332), 459 (Ev. 7549-51; D. 332); letter Green to Prescott, Mass. Ex. 86 (Ev. 5243-9; D. 233); letters between Green and Davis, Mass. Exs. 423, 424, 425 (Ev. 6530-4, 6553-5 and 6556-7; D. 306-7), and Mass. Ex. 75 (Ev. 5897; D. 271); letters Green to his gardener, Mass. Exs. 438 and 439 (Ev. 7047-53; D. 330); letter about war conditions and labor, Mass. Ex. 73 (Ev. 5895; D. 271); letter ordering line for electricity, Mass. Ex. 72 (Ev. 5228; D. 232); letter ordering 2000 rambler roses, Mass. Ex. 89 (Ev. 5249; D. 233); memo re lilacs, Mass. Ex. 91 (Ev. 5919; D. 271); letter Bossom to Sullivan about construction of vault for liquor, Mass. Ex. 447 (Ev. 7494-7500; D. 330); letters between Green and Van der Putten concerning moving of furniture, Mass. Exs. 428 and 429 (Ev. 6607-11; D. 308), and Mass. Ex. 63 (Ev. 4336; D. 174); letters between Green and Taylor concerning breakwater and sea wall, Mass. Exs. 105, 106 and 107 (Ev. 5952-7; D. 272).

Green was impatient with the delay arising out of war conditions: Sullivan, Ev. 7585; D. 335; Davis, Ev. 6539, 6547, 6558; D. 306-7; letter about labor shortage, Mass. Ex. 73 (Ev. 5893-6; D. 271); and see Bossom's letter, Mass. Ex. 459 (Ev. 7549-51; D. 332-3).

Ceremony starting foundations: Berglund, Ev. 5669-70; D. 257; Harris, Ev. 6627-8; D. 310.

Time spent there: see Table B and supporting references to Evidence attached to Massachusetts Requests to Find.

Money spent: see breakdown of capital account, Mass. Ex. 411 (Ev. 5818-30; D. 267).

Moved into house July 1921: Berglund, Ev. 5674-5; D. 258; Sullivan, Ev. 7560; D. 333.

12. Green understood that his sister, Mrs. Wilks, was willing that he should have the right to occupy the Round Hills property and to do what he pleased with it during their joint lives and if he survived her he should have the entire ownership. Green on his part intended that on his death Mrs. Wilks should have the entire ownership and his will executed in 1908 left everything to her in case his mother did not survive him. Green had arranged that his wife should obtain no interest in his estate, by means of an antenuptial agreement which provided that Mrs. Green should receive a guaranteed income of $18,000 a year for her life in consideration of her relinquishment of dower and any other interest which she might otherwise have or acquire in Green's property or estate wherever located. As Green and his sister were the last of their line and were without any expectation of issue, it was Green's plan that after his death the house should stand as a memorial to the Green and Howland families, and with this in mind, Green had the house designed in such a way that it might then be converted into a hospital or some other kind of institution. His primary intention, however, was to build a large, simple home, and beyond that he never developed his ideas to the point of deciding what use would be made of it after his death or of planning how a conversion would be put into effect. From the time he moved into the house in July, 1921, until his death, Green used it as a home for himself and his household, and not for any other purpose (R. 36).

Arrangement with Mrs. Wilks as to use of Round Hills: Berglund, Ev. 5717-19 (cf. Ev. 5777-80; D. 262-4); Neyland, Ev. 6740; D. 317; Davis, Ev. 6586; D. 308.

Will and antenuptial agreement: Mass. Exs. 58 and 56 (Ev. 3412; D. 142; and Ev. 3382; D. 139).

Not definite as to what sort of institution: see conflicting statements made by Green to Corley, Ev. 405; D. 17; McKay, Ev. 638; D. 27; Davis, Ev. 6578-80; Neyland, Ev. 6718-19, 6730-1; D. 315-16; Berglund, Ev. 5710-12; D. 261; Van der Putten, Ev. 4324; D. 173; Price, Ev. 3739-40; D. 162; Fla. Ex. 356 (Ev. 9515; D. 396); Bowles, Ev. 6881-2; D. 325; Buie, Ev. 871; D. 39; Parker, Ev. 4821; D. 196.

Did not plan how a conversion would be put into effect: Hartwig, Ev. 7837-8; D. 203; Sullivan, Ev. 7579-85; D. 335; see also architect's plans, N.Y. Ex. 99 (D. 177).

Round Hills house was intended throughout to be used as Green's home during his lifetime: Bossom's letter, Mass. Ex. 451 (Ev. 7523-4; D. 331); Van der Putten, Ev. 4354; D. 174; Sullivan, Ev. 7585-7, 7590; D. 335; Berglund, Ev. 5670, 5717-19, 5777-80; D. 257, 262, 264; Hartwig, Ev. 7818-19; D. 201; Mass. Ex. 470 (Ev. 9736-8; D. 407); Bowles, Ev. 6846-7, 6881-3; D. 324-5; Hill, Ev. 6898-6900; D. 326.

Conversion not to take place until after Green's death: Berglund, Ev. 5710-12, 5777-80; D. 261, 264; Emery, Ev. 6441, 6447; D. 302; Neyland, Ev. 6683-4, 6739; D. 314, 317; Parker, Ev. 4821-4; D. 196.

Time Spent in Massachusetts.

13. In 1921, when the Round Hills house was first occupied (R. 35, 51), Green spent three and one-half months there from July 1st to October 15th, leaving soon after on his fall trip to Texas. The house remained open and completely staffed, but Green's acute illness in Dallas in October, 1921, and his subsequent medical treatment in New York made his return to Round Hills that year impossible.

July 1 to October 15, etc.: see Tables A and B and supporting references to Evidence attached to Massachusetts Requests to Find.

House remained open and completely staffed: Berglund, Ev. 5790; Bennett, Ev. 6815.

Illness confined him to New York that fall: Pascal, Ev. 4130, 4137-8, 4140-2; D. 164-5.

14. From 1922 throughout the remainder of his life Green spent approximately five and one-half months of every year at Round Hills, except in four years when illness required him to go to New York City for medical attention or to Asheville, N.C., Lake Placid, N.Y., or Florida for the sake of his health. In the other ten of these fourteen years he arrived at least as early as July 1st and remained into December (R. 43).

See Tables A and B and supporting references to Evidence attached to Massachusetts Requests to Find.

Three years: 1923, medical attention in New York, Nov. 15 to Dec. 26, Pascal, Ev. 4145; D. 165; 1930, sent to Asheville, N.C. for sake of his health, Pascal, Ev. 4167-8; D. 167; 1932, sent to Lake Placid for same, Pascal, Ev. 4176-7; D. 167; in 1935 Green left late in November at which time he was approaching his final collapse (see references under paragraph 36, *infra*).

Physical Characteristics of Massachusetts Dwelling Place.

15. The Round Hills property passing under Hetty Green's will was a triangular tract, with sandy shores, jutting into Buzzards Bay. It was mostly wooded and uncultivated farm land, on which were located the old Howland homestead, a few farm buildings and a small family graveyard containing two old graves of members of the Howland family. Between 1918 and 1920, Green purchased about 140 contiguous acres, principally from his Howland cousins. This land completed the tract between the Point and the public highway, except for two small pieces of about 4 acres each, which Green purchased in 1925 and 1927. Green never sold any of this land, although in 1925 he conveyed about 4 acres to Whaling Enshrined, Inc., a charitable corporation. At the time of Green's death, the Round Hills estate comprised approximately 270 acres. The estate had a bathing beach on each side of Round Hills Point. On the property there were some woods and about 150 acres of farm land. The rest of it was given over to lawn and shrubbery. Apart from the Round Hills estate Green, in 1918, acquired a property known as South Wharf situated in Padanaram, a section of South Dartmouth, about a mile away from Round Hills, and this served as headquarters for his fleet of boats. In conjunction with this wharf he built a machine shop and added a floating stage to facilitate landing (R. 36).

Inherited property: chart, Mass. Ex. 413; D. 296-7; uncultivated, Marshall, Ev. 5355; D. 241; beaches (north and south), Tullouch, Ev. 7105 and 7108; D. 341; buildings, Peckham, Ev. 6377-8; D. 298; graveyard, Marshall, Ev. 5438-9; D. 246; and view.

Purchases of land, chiefly from Howland cousins: McLeod, Ev. 6349-65, 6561; D. 297; Mass. Ex. 413; D. 297 (chart).

Conveyance to Whaling Enshrined the only land conveyed: McLeod, Ev. 6367-9; D. 297.

Farm 150 acres: Tullouch, Ev. 7093-5; D. 340.

South wharf: acquired in 1918, Mass. Ex. 76 (Ev. 5899-5900; D. 271); headquarters for boats and floating stage, Bennett, Ev. 6787-9; D. 320; Davis, Ev. 6577, 6587; D. 308; machine shop, Mass. Ex. 411, Ev. 5829; D. 267.

16. Between the fall of 1917 and the middle of 1921, Green had constructed on the estate in addition to his house some half dozen cottages and a large multiple dwelling for farm employees, numerous farm buildings and garages, two large greenhouses, an 800-foot wharf, a 50,000-gallon water tank, bath houses and a bath pier. He built jetties and retaining walls along the shore to prevent erosion. He erected high wire fences around the inland boundaries of the estate, and planted thousands of rambler roses along their entire length. Green later added, among other things, an open-air swimming pool and a tennis court for the use of his wards and other guests, two radio broadcasting stations with antennæ towers, workshops, laboratories and an airport with an airplane hangar and an airship dock. He brought to the estate a Rhode Island windmill of pre-Revolutionary days, a complete whaling ship formerly of the New Bedford fleet and an old blacksmith shop and candle factory reminiscent of the old whaling industry. At the time of his death there were about 60 buildings on the property (R. 36).

Construction 1917-1921: Big house, contract, Mass. Ex. 85 (Ev. 5908; D. 271); Sullivan's testimony; cottages, etc., Mass. Ex. 412 (photographs); D. 268; and see Davis letter, Mass. Ex. 423 (Ev. 6530-4; D. 306); large multiple dwelling, Davis, Ev. 6541, 6549-50; D. 306, 307; two large greenhouses and seven-stall garages (1917), Mass. Exs. 424 and 425 (Ev. 6553-7; D. 307); Davis, Ev. 6548 (1919); D. 307; Mass. Ex. 84 (Ev. 5902; D. 271); 800-foot wharf, water tank, bath houses, pump house, etc., Mass. Ex. 423, *supra* (Ev. 6530-4; D. 306); bathing pier (1921), Davis, Ev. 6541; D. 306; marine railway, Mass. Ex. 381 (Ev. 6274; D. 293); and jetties, Mass. Ex. 420 (Ev. 6519-22; D. 306); retaining wall, Mass. Ex. 106 (Ev. 5954-6; D. 272); sea-wall, Mass. Ex. 385 (Ev. 6285; D. 293); fences and roses, Mass. Exs. 86, 89 and 90 (Ev. 5243-50; D. 233).

Construction after 1921: swimming pool, Taylor, Ev. 6977; D. 328; tennis court, Sullivan, Ev. 7580; D. 335; Mass. Ex. 456 (Ev. 7541-4; D. 332); broadcasting stations, Taylor, Ev. 6966-7; D. 328; laboratories,

etc., Odierne, Ev. 6496; D. 304; Davis, Ev. 6651; D. 312; airport, etc., Taylor, Ev. 6967-9; D. 328; old windmill, Emery, Ev. 6385; D. 299; whaleship, blacksmith shop, candle factory and oil works, Taylor, Ev. 6965; D. 328; from artesian wells dug in 1930, Mass. Exs. 293, 294 and 295; (Ev. 6150-8; D. 286); and Mass. Exs. 301, 302 and 303 (Ev. 6162-6; D. 287).

17. The house at Round Hills was a three-story granite structure, roughly rectangular, with its length running north and south and with rectangular wings across each end. The east face of the building overlooked Round Hills Point and was separated from the north beach, at its nearest point, by about 500 feet of lawn. Coming up the main driveway, one approached the west or inland side of the house, from the center of which protruded a large portico of Doric design with four columns two stories high surmounted by a heavy pediment. The house had a hip roof, heavily tiled and broken by numerous dormer windows. A two-story service wing extended from the main north wing, leading to a service yard and garages. Along the waterfront side of the building was a wide tile terrace which extended around the south wing and terminated in an open loggia overlooking the south beach. The floor of the loggia was of glazed tile so as to permit dancing there (R. 37). The tile on the terrace was completely replaced in 1930 at a cost of about $14,000.

Architecture, position and appearance: architect's plans and elevations, N.Y. Ex. 90; D. 177; chart of property, Mass. Ex. 413; D. 296; photograph of house, Mass. Ex. 65; D. 174.

Service yard and garages: photographs in evidence; see also letter, Green to Duff, N.Y. Ex. 136 (Ev. 4553; D. 184).

Glazed tile in loggia to permit dancing: letter Green to Bossom, Mass. Ex. 452 (Ev. 7525; D. 331); tile replaced on terrace, cost $13,819.00, Mass. Ex. 292 (Ev. 6147-50; D. 286).

18. Under the portico was the main entrance, decorated with stone scrollwork, leading into the central hall which also opened onto the terrace at the other side. This hallway contained a double mahogany staircase to the second floor and an electric elevator running from the basement to the

third floor. To the right were Green's study, the library and a hall leading to the living room, which occupied the entire south wing and measured approximately 60 feet by 30 feet. Secluded from the main hall to the left of the entrance was the Round Hills estate office where the farm accounts and payrolls were kept, and which contained a telephone switchboard connecting the extensions in the house and in the various buildings on the estate with each other and the New Bedford central office. Further along to the left, the hallway opened into the dining room measuring approximately 40 feet by 30 feet, through which one passed to reach the breakfast porch in the north wing. At this end of the building were also a butler's pantry measuring 25 feet by 22 feet, the main kitchen, servants' kitchen and dining hall, pastry room and laundry (R. 37).

Interior of house, dimensions of rooms, etc.: architect's plans, N.Y. Ex. 90 (D. 177); photographs, Mass. Exs. 65A-65V (D. 174); view.

Small office for farm accounts and payrolls: Chinn, Ev. 2789; D. 94; appraisal, Texas Ex. 326 (Ev. 3847-8; D. 79); switchboard and extensions, letter from Green to Duff, N.Y. Ex. 135 (Ev. 4549-50; D. 184).

19. On the second floor the Greens' bedrooms occupied the entire south wing, each measuring approximately 30 feet by 25 feet, and opening off the central hallway were six guest bedrooms. Each of these rooms was provided with its own fireplace and bath. Mrs. Green's bedroom was connected by a private stairway with her maid's room overhead. On the second floor there was also a room decorated as a Japanese tea room, and over the service wing were the office, bedroom and bath of Green's secretary (R. 37). The servants' quarters occupied the third floor and, with the service wing, were designed to house and feed from twenty-five to thirty house servants (R. 38). The basement contained a double-boiler furnace which was replaced by an automatic oil system installed by Green in 1935, a valet's pressing room and therapeutic room and, at one end, a

vily constructed vault for the storage of Green's valu-
s (R. 37).

Plan and dimensions of rooms: see plans, N.Y. Ex. 90 (D. 177); stairway connection between Mrs. Green's room and her maid's room, *id.*, and Sullivan, Ev. 7577-8; D. 334; Japanese tea room, Mass. Ex. 65-M (D. 174); servants' quarters, see plans; *cf.* Sullivan, Ev. 7576-7; D. 334; and Howes, Ev. 4390; D. 178; also the fact that there were twenty-five to thirty house servants there, twenty-six according to Marshall, Ev. 5379-81; D. 242; twenty-four to twenty-eight according to Mrs. Donn, Ev. 8140-1, 8145-6; D. 348 (there being seven left at Round Hills according to Hill, Ev. 6900-2; D. 327).

Basement: see plans, N.Y. Ex. 90 (D. 177); Howes, Ev. 4389-90; D. 178; new oil heating system installed in 1935, Vander, Ev. 7146; Hill, Ev. 6902-3; D. 327; vault and vault door, Mass. Ex. 452 (Ev. 7528; D. 331).

The house was massively built, the exterior walls be-
) inches thick and composed of granite blocks backed
asonry; in the interior, columns, beams and floor slabs
of reinforced concrete, and the partitions between
oms were either of brick or of terra cotta tile. The
on the roof was set in concrete supported by a steel
which rested on the outside masonry walls. Against
mpness prevailing in the locality the house was pro-
on the outside by an agricultural drainage system,
the furred space in the outer walls by a coating of
damp-proofing (R. 37).

Construction: exterior walls, Sullivan, Ev. 7570; D. 334; reinforced
ncrete, *id.*; partitions, Sullivan, Ev. 7571-2; D. 334; roof, Mass. Ex.
(D. 174); and N.Y. Ex. 210 (photographs) (D. 281); Sullivan, Ev.
57; D. 336; Howes, Ev. 4360; D. 174; Hartwig, Ev. 7820; D. 202.
Drainage system and damp-proofing, Sullivan, Ev. 7570-1; D. 334.

ns and Things There.

Green's household at Round Hills included Mrs.
his secretary Marshall, a young woman who kept
nd Hills farm accounts and payroll, another who
rge of Green's numismatic collection, Mrs. Green's
maid, a maid or practical nurse to assist Green,
taff of between twenty-five and thirty house ser-
Outside the house there were approximately fifty-

five farmers and other employees. Mrs. Stafford lived at Round Hills each year with the Greens from 1920 through 1927, and until Green's death there was almost always one or more of Green's "wards" staying at the house during summer vacation from school or college. The great majority of the outside employees remained on the estate all the year round. The entire staff of house servants also remained there during the winter of 1921-1922 but thereafter only a skeleton force of seven or eight servants was left in the house during the winter and spring seasons when the Greens were not at Round Hills. After the completion of the servants' quarters of Green's Florida house, the staff, except for this skeleton force, was sent from Round Hills to Florida in the latter part of each year and were sent back to Round Hills from Florida when the Greens left there (R. 38).

Household: Marshall from 1922 on, Marshall, Ev. 5361-3; D. 241; Mina Cayton and Elaine Chinn, Chinn, Ev. 2791; D. 94; numismatic girl, Marshall, Ev. 5398-9; D. 244; and Jette, Ev. 6614; D. 308; Mrs. Green's maid, Marshall, Ev. 5380-1; D. 242; practical nurse for Green, Bergland, Ev. 5680-1; D. 259; staff of servants and outside help, Marshall, Ev. 5379-81; D. 242; Mrs. Stafford and wards, Stafford, Ev. 4989-90; D. 209; Bergland, Ev. 5707; D. 260; Marshall, Ev. 5389-5400; D. 243; Stephenson, Ev. 6309-11, 6314, 6321-2; D. 294-5; Briggs, Ev. 6761-2, 6765; D. 318.

Outside help remained all year: Tulloch, Ev. 7095; D. 341; Hill, Ev. 6900-1; D. 327.

House servants: stayed during winter 1921-2, Bennett, Ev. 6815; Bergland, Ev. 5790; skeleton force of seven or eight thereafter, Bennett, Ev. 6815; Joyce, Ev. 2799; D. 95; balance of staff sent to Florida first in 1926 and went back and forth each year thereafter, Bergland, Ev. 5772; D. 263; Hill, Ev. 6900; D. 327; Mrs. Donn, Ev. 8140-1; D. 348; sent back to Round Hills in spring of 1936, Natsis, Ev. 7454-5; D. 330; Graber, Ev. 8885; D. 375.

22. The house at Round Hills was elaborately furnished, chiefly with specially built furniture and partly with furniture, pictures and clocks which Green had moved there from the 5 West 90th Street house in New York, some of which had formerly been in his home in Dallas. The decorations and fixtures were an expression of Green's own personality and tastes. Some of the rooms on the ground floor were provided with revolving fans suspended from the

ing, such as Green had known in Texas, with the differ-
e that the blades of these fans were made reversible for
purpose of circulating heat from the radiators in cold
ther (R. 37).

Elaborately furnished: specially made, see letter Van der Putten to Green, Mass. Ex. 429 (Ev. 6609; D. 308); Yeaton, Ev. 9703-4; D. 406; Mass. Exs. 65-A to 64-V (photographs) (D. 174); cost, Van der Putten, Ev. 4339-40; D. 174; partly with furniture, pictures and clocks from 5 West 90th Street house, Van der Putten, Ev. 4327; D. 173; Mrs. Holeinger, Ev. 2963-7; D. 114; Mass. Ex. 63 (Ev. 4336; D. 174); Mass. Exs. 428 and 429 (Ev. 6608-10; D. 308); some formerly at Dallas, see letter to Howard Clock Co., Mass. Ex. 154 (Ev. 5280-2; D. 235).

Decorations and fixtures were an expression of Green's personal tastes, rather than the decorator's: letter to Bossom as to mahogany wainscoting, Mass. Ex. 454 (Ev. 7537; D. 332); and see letter Bossom to Green contrasting Green's and Van der Putten's ideas, Mass. Ex. 451 (Ev. 7523-4; D. 331); with which compare Van der Putten, Ev. 4331-2; D. 173; also, with respect to electric outlets, compare Van der Putten, Ev. 4334; D. 174, with Sullivan, Ev. 7563; D. 334; and Bossom's letter, Mass. Ex. 445 (Ev. 7490-3; D. 330); Green's choice of electric fans, Sullivan, Ev. 7584-5; D. 335; and Green's choice of a place for his mother's portrait, Van der Putten, Ev. 4343-5.

Green brought to and kept at the Round Hills house
his personal and intimate possessions in which he
sentimental interest. This house contained the Green
nd *penates* and all the indicia of home. In the main
y was a large oil painting of Green holding his favor-
ton terrier "Stella." The walls of Green's library
ground floor were covered with innumerable ob-
ncluding pictures and plaques of whales and whaling
ith several different views of the enshrined "Charles
gan"; a framed certificate of Green's membership in
sachusetts Society of the Sons of the American Revo-
another of his membership in the Massachusetts
ltural Society; a framed photograph of the New Bed-
use where his mother was born, and another of the
s of New Bedford's "Stone Fleet"; framed photo-
of Green as a Colonel on the staff of Governor
of Texas in 1911, and as one of the judges of an
meet at the Dallas Fair in the same year; a framed
r $100,000, with which Green had, in 1921, stopped
s run on the Security National Bank in Dallas; a

photograph of Green donating the "Round Hills Trophy" to the New Bedford Yacht Club in 1930, and another of Green welcoming the famous aviators, Boardman and Polando, at his Round Hills airport in 1931. In the living room were two oil portraits of Mrs. Hetty Green and an oil portrait of Green's grandfather, Edward Mott Robinson. The library and billiard room contained numerous volumes on early New England history, log books of the New Bedford whaling fleet, a large lithograph on which were reproduced in colors the flags of the New Bedford fleet, and two machines used for stamping small medals with the names of visitors to the "Charles W. Morgan" and the dates of their visits. In these rooms were also three nickel slot machines. On the dressing table in Green's bedroom was a photograph of his mother, and on the wall hung an oil painting of the old Howland homestead. His desk and the tables in this room were crowded with mechanical devices such as computing machines, radios, optical instruments and articles used in connection with his stamp and coin collections. In the basement, there was a vault for the safekeeping of his entire supply of liquor and the bulk of his valuable collections of jewelry, numismatics and stamps (R. 37-8). Some of these collections accompanied Green to Florida and other places when he was away. For the most part they were at Round Hills at the time of his death (R. 21, 38).

Lares and *penates* at Round Hills: Portrait of Green in hallway, photograph, Mass. Ex. 65-A; D. 174; and appraisal, Texas Ex. 326 (Ex. 3815); pictures and plaques of whales and whaleships, Berglund, Ex. 5719-20; D. 262; Texas Ex. 326 (appraisal, Ex. 3854-5, 3851-2); certificates (appraisal, Ex. 3850-1); and Emery, Ex. 6405; D. 300; photo of house where his mother was born, Emery, Ex. 6406; D. 300; and appraisal (Ex. 3852); Captains of the Stone Fleet, Emery, Ex. 6439-40; appraisal (Ex. 3852); photo of Governor Colquitt's staff including Green as Colonel, letter to York, Texas Ex. 294 (Ex. 2383-5; D. 73); Marshall, Ex. 5343-4; D. 240; Green as judge of aviation meet, Marshall, Ex. 5342, D. 240; cancelled check for $100,000, Marshall, Ex. 5641-2; Green donating Round Hills Trophy, Mass. Ex. 434 (Ex. 6905; D. 327) and Hill, Ex. 6904-5; D. 327; welcoming Boardman and Polando, appraisal, Ex. 3852; and see minutes of Round Hills Radio Corporation, Mass. Ex. 437 (Ex. 7019; D. 329); portraits of Hetty Green, appraisal, Ex. 3831 and 3832; and of E. M. Robinson, *id.*, Ex. 3832; Van der Putten, Ex. 4343-5; Marshall, Ex. 5599; D. 253.

Early New England history, etc., Mass. Ex. 418 (Ev. 6388.92; D. 299); Emery, Ev. 6387.94; D. 299; detail of all such books set forth in appraisal, Texas Ex. 326; flags of New Bedford whaling fleet, Mass. Ex. 378 (photostat) (D. 293); Emery, Ev. 6395; D. 299; and Green's letters to Mansell, Mass. Exs. 160 and 168 (Ev. 6040 and 6045; D. 278); stamping machines, appraisal, Ev. 3834, and Ashley, Ev. 6462.3; D. 303; nickel slot machines, Stephenson, Ev. 6315; D. 295; and view.

Green's bedroom (appraisal, "Decedent's Chamber," Ev. 3918.3929); Howland homestead, Ev. 3919; machines, radios, etc., Ev. 3920.6; pictures of Mrs. Hetty Green, view, and Ev. 3926.

Basement: storage vault, etc., Marshall, Ev. 5388.9, 5531, 5587, 5594; D. 243, 250, 253.

Collections there at time of death: jewels, Marshall, Ev. 5587; numismatics, Jette, Ev. 6624.5; D. 309; 20th century stamps, Marshall, Ev. 5387.9; D. 243; and see Chrystie, Ev. 2554, 2563.4, 2568.

At one time Green had twelve boats of varying and sizes at Round Hills or South Wharf. He made use of them after the "United States" sank in 1919, old most of them in 1920, but the grounds surrounding ain house at Round Hills were thoroughly decorated mementoes of the sea. Hundreds of yards of anchor were placed along the borders of the driveways, with s placed at intervals. In the vicinity of the enshrined les W. Morgan" the mast and part of the hull of ecked whaling ship "Wanderer" stood on the lawn .

Boats: Fla. Ex. 3 (Ev. 3491; D. 150); Bennett, Ev. 6788; D. 320; as Ex. 296 (Ev. 2402.4; D. 74); Potter, Ev. 3557.8; D. 156.

Grounds: anchor chains and anchors, Fla. Ex. 355 (Ev. 9500.1; 96); Emery, Ev. 6436; D. 301; Neyland, Ev. 6729, 6735.6; D. 316.17; Wanderer, Neyland, Ev. 6664; D. 313; Taylor, Ev. 6965; D. 328; r mementoes of the sea, Emery, Ev. 6395; D. 299; Neyland, Ev. 6716, , 6728.9; D. 315.16; see also newspaper article, Fla. Ex. 355 (*supra*).

reen kept most of his automobiles at Round Hills, bore Massachusetts license plates (R. 39). Prior e had kept from one to two automobiles in New , bearing New York license plates, but these after transferred to Massachusetts and were only kept ork during the short periods when the Greens ping there (R. 33). Automobiles for the use of Mrs. Green were habitually taken to Florida and

back each year after the Greens started going there, and these were sometimes, but usually were not, provided with Florida license plates (R. 39).

Massachusetts cars: thirteen carrying Massachusetts plates and garaged at Round Hills in 1936, Texas Ex. 343 (Ev. 6929-49; D. 327).

New York cars: one or two kept at Commodore Biltmore garage until July 2, 1931, N.Y. Ex. 22 (Ev. 3139-41; D. 125); transferred to Massachusetts, Potter, Ev. 3364; D. 138; thereafter Green brought cars in only while stopping in New York, N.Y. Ex. 22 (Ev. 3144; D. 125); with which compare time chart, Table A and supporting references to Evidence attached to Massachusetts Requests to Find; and they remained in Massachusetts after 1933, Potter, Ev. 3364; D. 138.

Greens habitually took automobiles with them to Florida and back; Mrs. Donn, Ev. 8146; usually carried Massachusetts plates, Forrester, Ev. 8504; D. 362.

Cars carrying Florida license plates:

1923—None.
1924—None.
1925—None.
1926—None.
1927—One Buick, Fla. Ex. 296 (Ev. 9184-6; D. 384).
1928—One electric roadster, Fla. Ex. 299 (Ev. 9202-3; D. 384).
1929—Same electric roadster, Fla. Ex. 302 (Ev. 9214-18; D. 384); one Lincoln Sedan, Fla. Exs. 295 (Ev. 9181-3; D. 384); and 304 (Ev. 9224-8; D. 384); and one Lincoln Cabriolet, Fla. Exs. 301 (Ev. 9212-14; D. 384); and 303 (Ev. 9219-23; D. 384).
1930—None.
1931—One electric roadster, Fla. Ex. 312 (Ev. 9279-81; D. 384). A 1931 license was obtained also for the Lincoln Cabriolet, Fla. Ex. 311 (Ev. 9277-8; D. 384); but this was sold December 20, 1930, Fla. Ex. 314 (Ev. 9291-4; D. 384).
1932—One Stearns Knight, Fla. Ex. 316 (Ev. 9298-9300; D. 384), and one Lincoln Limousine, Fla. Ex. 315 (Ev. 9295-7; D. 384).
1933—None.
1934—None.
1935—None.
1936—One Lincoln Limousine, Fla. Ex. 319 (Ev. 9319-21; D. 384); which had previously carried Massachusetts plates *(id.,* Ev. 9320, line 13, and Texas Ex. 343 I, Ev. 6945-6; D. 327). This was the car with the glass top, traded in for a new model in January, 1936, Natsis, Ev. 7455-7; D. 330. The new car carried Massachusetts plates, Texas Ex. 343 (Ev. 6929-34; D. 327); Natsis, Ev. 7457; D. 330.

Things Done There.

(a) The Years before Round Hills was Occupied (1918-1929).

26. From June 21 to the middle of October, 1918, Green and his wife and one of his wards lived on the yacht

nited States'' anchored off Round Hills. The yacht had rew of seventy-two officers and men (R. 29), and was rounded by a flotilla of a dozen boats which Green called ''Navy'' (R. 38). Each boat had a captain and a flag. captains reported for duty every morning at 8 o'clock, to their various boats and waited for Green to raise lag of one of the boats. The boat whose flag was raised went alongside the ''United States'' and took Green re. Aside from a trip to Block Island, about 50 miles nt, and several shorter trips, the yacht did not leave nchorage (R. 29).

As to time, see Table B and supporting references to Evidence attached to Massachusetts Requests to Find.
Ruth Lawrence (Briggs), Ev. 6763; D. 318.
Crew and flotilla, Bennett, Ev. 6788-9; D. 320.
Yacht hardly left anchorage: Bennett, Ev. 6784; D. 319; Briggs, Ev. 6763; D. 318.

Green's routine that year was to breakfast on the ed States'' alone, go to Round Hills and spend practically all day watching the developments going on there, o New Bedford in one of the speed boats for a day's ng, returning to the yacht late in the afternoon. ed with his wife and guests and spent the evening yacht. Weekly he went to New York by the Fall oat on Tuesday or Wednesday night returning on ay or Friday night (R. 29). In New York he attended rs' meetings, did some shopping and went to the (R. 8).

Green's routine: Bergland, Ev. 5666, 5728; D. 257, 262; Bennett, 6785-6; D. 319; Davis, Ev. 6541-5; D. 306.
Weekly trips to New York: see Table B and supporting references Evidence attached to Massachusetts Requests to Find; shopping and tre, Stafford, Ev. 4964; D. 207.

When Green left Round Hills October 24, 1918, the States'' went to South Wharf near Round Hills, remained all winter, with its entire crew (R. 29). time it left that anchorage was to go to New Lon-

don, Connecticut, on March 30, 1919, returning on April 2d, for the purpose of having it outside of Massachusetts waters upon tax assessment day, April 1st—this being done upon the advice of Green's lawyers that he might thereby escape Massachusetts taxation on the yacht (R. 42).

Yacht stayed all winter with entire crew: Bennett, Ev. 6787-8; D. 320; going to New London over April 1st, Bennett, Ev. 6784; D. 319; to escape taxes, letters between Duff, Green and Pierson, Mass. Exs. 78 (Ev. 5104; D. 216), 79 (Ev. 5106; D. 216), 79-A (Ev. 5107; D. 216), 80 (Ev. 5112; D. 217); and letter Green to Prescott, Mass. Ex. 81 (Ev. 5114; D. 217).

29. Beginning July 1, 1919, Green with his wife and several wards resumed the same life as the year before, living on the "United States," which was anchored near Round Hills. In August, 1919, the yacht went aground in Padanaram Harbor and sank, which was the end of its career. Green with his wife and guests then went to the Tabitha Inn at Fairhaven, a nearby town, where they lived until he acquired a houseboat, the "Day Dream," and took up his living quarters on that (R. 29). While living at the Inn, Green motored to South Wharf every morning, took his lunch and sometimes dinner on one of his small boats, the "Lydia." The construction of Round Hills House began early in the summer. Green and his party went ashore to attend the ceremony at which Mrs. Green turned the first spadeful of earth (R. 35). Green's time was principally occupied in attending to the construction of the house, a large building for housing farm employees, the greenhouses and a machine shop (R. 35) and other improvements at South Wharf (R. 36). In that year he was granted a license for the construction and maintenance of a marine railway in the harbor. He contracted with an interior decorator for furnishing Round Hills House with specially made furniture, and ordered 2000 rambler rose bushes to plant along his border fences (R. 36).

Time: see Table B and supporting references to Evidence attached to Massachusetts Requests to Find.

Several wards: Stafford, Ev. 4972-5; D. 208; see Mass. Ex. 88 (Ev. 5240-5; D. 233) in which Green subscribed for tennis privileges for Ruth Lawrence and other guests; Briggs, Ev. 6764-5; D. 318; Marshall, Ev. 5400; D. 244-5; Corley girls were often there, Corley, Ev. 356; D. 15; and their father was there when the yacht sank, Corley, Ev. 936.

Greens and their party went to Fairhaven: see Table B and supporting references to Evidence attached to Massachusetts Requests to Find.

Day Dream was purchased in September, 1919, Bennett, Ev. 6787-8; D. 320; Fla. Ex. 3 (Ev. 3491; D. 150).

Green's routine: Bennett, Ev. 6787-8; D. 329; Berglund, Ev. 5669-70; D. 257.

Ceremony of starting foundation for Round Hills House: Berglund, Ev. 5669-70; D. 257; Harris, Ev. 6627-8; D. 310.

Green's time occupied with construction, etc.: Sullivan, Ev. 7561; D. 334; Harris, Ev. 6628; D. 310; see also references under paragraphs 10, 11 and 16, *supra*.

In 1920 Green, with his wife, Mrs. Stafford and
l of his wards, lived on the houseboat "Day Dream"
, 35), moored off South Wharf. The "Day Dream"
sailed beyond Cuttyhunk Island, a few miles distant
Round Hills. Green went ashore daily, motored to
edford to do his shopping and to Round Hills where
nded to the construction of the Round Hills House
), going over the completed portions and going up
wn the temporary stairways, giving his attention to
allest details. He went weekly by the Fall River
New York as before, but attended no directors' meet-
re after July 1st.

Persons on board Day Dream: Stafford, Ev. 4969-75; D. 208.

Day Dream moored off South Wharf: Berglund, Ev. 5672; D. 258; only one trip to Cuttyhunk, Bennett, Ev. 6801.

Green went ashore daily: Berglund, Ev. 5673; D. 258; motored to Bedford, Berglund, Ev. 5673; D. 258; attended construction at Round Hills, Berglund, Ev. 5673; D. 258; Stafford, Ev. 4970-1; D. 208; Sullivan, Ev. 7561; D. 334; used temporary stairways, Sullivan, Ev. 2; D. 336.

Weekly trips to New York but no directors' meetings: see Table B supporting references to Evidence attached to Massachusetts Requests to Find and N.Y. Ex. 14 (Ev. 3617-18; D. 157).

e First Year in the Round Hills House (1921).

ly 1, 1921, Green and his wife, Mrs. Stafford and
f his wards, who were there during their summer

vacation, entered into occupancy of the completed home (R. 35, 38). Green had disposed of most of his flotilla (R. 38), retaining the "Lydia." His attention this year was devoted chiefly to completing the development of his properties. As before, he made his weekly trips by the Fall River boat to New York and return, attending directors' meetings there (R. 39). He left late in October for his usual fall trip to Texas.

Occupied house July 1, 1921: Berglund, Ev. 5674-5; D. 258; Stafford, Ev. 4976-8; D. 208; Sullivan, Ev. 7560; D. 330; Harris, Ev. 6632; D. 310.

Lydia retained: Bennett, Ev. 6807; D. 320.

Completing developments: Harris, Ev. 6629-33; D. 310; Sullivan still there, Ev. 7629; and payments still being made to Bossom, Mass. Ex. 411 (Ev. 5822; D. 267); bathing pier license, Mass. Ex. 382 (Ev. 6276; D. 293); and payments still being made to Taylor, Mass. Ex. 411 (Ev. 5827; D. 267); also payment to Roarke, *id.*, who was the road-builder—see Mass. Ex. 123 (Ev. 5263-4; D. 234); farm and greenhouses, Neyland, Ev. 6706.

Trips to New York and Texas: see Table B and supporting references to Evidence attached to Massachusetts Requests to Find.

(*c*) *The Years from 1922 to 1932.*

32. Beginning in 1922 Green's physical activities were circumscribed owing to the arthritis he had developed in Texas the previous October. While he could still walk short distances he was for the most part obliged to rely upon his wheelchair and automobiles to get about. He procured a small electric motor-car, hand-operated, familiarly called the "Cream-Puff," and in this drove himself, often with his Boston terrier "Stella," all over the estate, and sometimes beyond its confines. It was fitted up with a shelf upon which he could place his collections, picture puzzles, books and papers. In November, 1924, Green bought a small closed electric car, with heating equipment, so that he could be comfortable in cold weather (R. 39). Some of the buildings on the estate were equipped with inclined driveways so that Green could drive in and out. He used these cars in all kinds of weather, and by means of them was

able to spend most of his time outdoors and give attention to the numerous activities on the Round Hills estate (R. 39).

Arthritis developed in October, 1921: see paragraph 13, *supra*; walked thereafter with difficulty but relied mostly on wheelchairs and automobiles, Berglund, Ev. 5700-1, 5758-60; D. 260, 263; Stafford, Ev. 4983-5; D. 208; Neyland, Ev. 6653; D. 312; Pascal, Ev. 4165-7; D. 166-7.

Small open electric car in which Green drove himself around the estate: photographs, Mass. Exs. 393 and 408 (D. 208, 245); bought in 1922, Newington, Ev. 2740-2; D. 90; photograph, Mass. Ex. 403 (D. 245); Bowles, Ev. 6833-4; D. 322; drove around the estate, Stafford, Ev. 4983-5; D. 208.

Closed electric car with heater: photographs, Mass. Exs. 400 and 401 (D. 245); bought in 1924 and contained heater, Marshall memo., Mass. Ex. 172 (Ev. 5283; D. 236).

Stella the dog: photograph, Mass. Ex. 408; D. 245; Stephenson, Ev. 6312-13; D. 295.

Entered buildings on ramps: Odiorne, Ev. 6503; D. 304; Bowles, Ev. 6845; D. 323; Hill, Ev. 6917; D. 327; view of swimming pool ramp, and see Berglund, Ev. 5708; D. 260.

Went out in all kinds of weather: Carlson, Ev. 5882-3; D. 270; Hill, Ev. 6903; D. 327; Marshall's memo. on car with heater, *supra*, Mass. Ex. 172 (Ev. 5283; D. 236).

33. At Round Hills, as elsewhere, Green did not go into ociety. When he first went to Round Hills, many of the esidents of the fashionable summer colonies at Nonquitt nd Salters Point called on him, but he never returned the alls and was indifferent to their society (R. 39). In fact, is relations with them became strained, because they ob- ected to the noise of the radio loud speakers on his estate, e airplanes which came and went from his landing field, nd the influx of the thousands of people to bathe at his eaches, visit the whaling vessels and admire his grounds R. 39-40). Green's guests at Round Hills House were nited for the most part to his wards, of whom there were sually several present during the school vacation periods, ew New Bedford friends who infrequently came to dinner the house, and occasional visitors from among his old ends in Texas. Few of his New Bedford friends ever nt into the house, and they customarily met him in his tor-car on the grounds. Green enjoyed hobnobbing with employees and the local tradespeople, who came outside

their shops to talk with him in his automobile on his daily trips to New Bedford. He always kept his grounds open to the public, who came in thousands to bathe and sun on his beaches, and to see the whaling ship "Charles W. Morgan." Green enjoyed talking with these visitors and watching the bathers on his beaches. He was generally popular with the common people of the vicinity. He made his grounds and boats available for outings for crippled children, and furnished motor-bus transportation the year round for girls attending the public schools in the neighborhood (R. 39).

Relations with summer colonists: Marshall, Ev. 5632-4; D. 256; letter to Mrs. Brooke, Mass. Ex. 225 (Ev. 5298-5309; D. 237), as to which see Marshall, Ev. 5630; D. 255.

Friends were among local residents of New Bedford: Marshall, Ev. 5631-2; D. 256; Bartlett, Ev. 4810-3; D. 195; did not go into the house much, but met him on the grounds, Ashley, Ev. 6459-60; D. 302; and wards, Marshall, Ev. 5400-1; D. 244; Stephenson, Ev. 6309-11, 6314, 6321-2; D. 294, 295; Berglund, Ev. 4990; D. 209.

Outings for crippled children: Hill, Ev. 6894-5; D. 326; Mass. Exs. 212 (Ev. 6087-90; D. 281), 443 and 444 (Ev. 7487-90; D. 330); Mass. Ex. 345 (Ev. 6196-7; D. 290).

School bus: Hill, Ev. 6896-8; D. 326; and Mass. Ex. 433 (photograph) (D. 326).

34. His daily routine was to have coffee served to him at 7 and to take breakfast at 9, either downstairs with his wards or alone in his room; motor to New Bedford on a shopping tour or go out on his estate, take lunch either alone or with his family, spend the afternoon watching the manifold activities which were always going on on his estate, dine with his family in the evening, spend a short time after dinner in conversation, showing moving pictures or playing the nickel slot machines (R. 39), then retire to his room, usually with his attendant Gerda Larson (later Mrs. Berglund) or one of his wards, and work late into the night or early morning on his stamp or numismatic collection (R. 39). His attendant gave him massages morning and night, and assisted him in dressing and undressing.

Daytime routine: coffee and breakfast, Carlson, Ev. 5858-9; D. 268; Stephenson, Ev. 6310-11; D. 294; Berglund, Ev. 5785-6; motor to New

Bedford shopping, Berglund, Ev. 5721-2; D. 262; Stephenson, Ev. 6307-8, 6311-12, 6318; D. 294-5; or go out on estate, Berglund, Ev. 5700, 5776-7; D. 260, 263; Marshall, Ev. 5403-4; D. 245; Carlson, Ev. 5869; D. 270.

Evening routine: dinner, and slot machines, Stephenson, Ev. 6314-15; D. 295; movies, Berglund, Ev. 5706-7; D. 260; retire and work late on collections, Stephenson, Ev. 6315-17; D. 295; Berglund, Ev. 5715; D. 261; massages and assistance, Berglund, Ev. 5758-60; D. 263.

35. Green during this period never used alcohol in any ɔrm, but was addicted to the excessive use of bromo-seltzer R. 43), which, despite precautions taken by his family and tendant, he succeeded in obtaining. Occasionally this sulted in extreme anaemia requiring blood transfusions to store him to health. Aside from the acute illnesses so used, Green's general health remained good, although ere was a gradual physical deterioration. He developed rheumatic condition, which the fog and dampness at ɔund Hills tended to aggravate, but despite his doctor's vice that he ought not to remain there so late in the year always insisted on staying into December, except on four asions in the last fourteen years when illness required ı to leave earlier (R. 43).

Used no alcohol but took bromo-seltzer to excess: Berglund, Ev. 5704-5; D. 260; Pascal, Ev. 4170-3; D. 167; Odiorne, Ev. 6505; D. 305; despite precautions, Stephenson, Ev. 6311-12; D. 294; Berglund, Ev. 5697-5700, 5764, 5782-5; D. 259, 263-4; necessitated blood transfusions, Pascal, Ev. 4170; D. 167; but general health remained good, Pascal, Ev. 4170-1; D. 167; Berglund, Ev. 5696; D. 259.

Round Hills climate not good for Green: Pascal, Ev. 4168-9, 4177-8; D. 167; kept coming back and staying late despite doctors' advice, Bowles, Ev. 6846-7; D. 324.

Stayed there into December ten years of the last fourteen, see Tables A and B and supporting references to Evidence attached to Massachusetts Requests to Find. In 1923 he left in November to receive medical treatment in New York for balance of year, Pascal, Ev. 4145; D. 165; in 1930 and 1932, ordered out of climate, Pascal, Ev. 4167-8, 4176-7, 4177-8; D. 167; letters from Green, Mass. Exs. 298 and 299 (Ev. 6160-1; D. 286-7); Texas Ex. 12 (Ev. 883; D. 40); Fla. Ex. 336 (Ev. 9402; D. 389); Fla. Ex. 352 (Ev. 9484; D. 395). In 1935 Green was very sick and nearing final collapse (see references under paragraph 36, *infra*).

) *The Years from 1932 to 1935.*

In September, 1932, Green had a serious illness hich a cardiac condition developed, requiring his de-

parture in October for Lake Placid. From this time Green's health declined steadily. He no longer went about by himself in the small cars, but was driven about by his chauffeur in a glass-topped automobile. He continued his daily shopping tours in New Bedford and still spent much time outdoors going over his estate, visiting the various activities there, usually accompanied by the last of his wards, then in her early teens. In 1935 he was a very sick man and was approaching his final collapse. So far as he was able, he continued about the same activities as theretofore, but was more and more confined to the house. Although his personal participation in the activities on the Round Hills estate was necessarily curtailed, his interest in them continued undiminished up to his death (R. 43).

Myocarditis in 1932: Pascal, Ev. 4172-3; D. 167; doctor advised leaving South Dartmouth to go to Lake Placid, Pascal, Ev. 4168-9; D. 167; steady decline, Bowles, Ev. 6844-4; D. 323; Stephenson, Ev. 6341-2; Vander, Ev. 7139-43. Discontinued driving himself, Berglund, Ev. 5751-57; D. 263 [but the date 1926 is too early, as shown by Mass. Ex. 403; D. 245] (photograph of Green in small electric, with the dirigible which came in 1929), as to which see Mass. Ex. 437 at Ev. 7018; D. 329; Green bought his big gas-electric car in November, 1929, Texas Ex. 343-D (Ev. 6958; D. 327-4).

Automobile with glass top: see last reference under paragraph 25, captioned "1936."

Continued going to New Bedford and around the estate: Stephenson, Ex. 6309-14; D. 294; Hill, Ex. 6905-4; D. 327; Vander, Ev. 7138-40.

Approaching final collapse in 1935: Not so bad in 1934, Graber, Ev. 8879-80; D. 375; but worse and more irritable in his last year at Round Hills, Graber, Ev. 8881; D. 377; and after he arrived in Florida late in 1935, he spent much of his time in bed and was at times under an oxygen tent, Roche, Ev. 7360-4, 7353-4, 7334; D. 107-8.

Interest in activities at Round Hills continued undiminished, though his personal participation was curtailed: Marshall, Ev. 5090; D. 254; Ballard, Ev. 7025-6; continued to supply facilities costing him, through contributions to Round Hills Radio Corporation, $101,731.32 from 1934 to the time of his death, Mass. Ex. 410-A (Ev. 5811; D. 265-7; Bowles, Ev. 6846-7; D. 324. It is clear that Green financed these facilities through the Corporation: minutes, Mass. Ex. 437 (Ev. 7016-23; D. 329); Ballard, Ev. 7025; Potter, Ev. 5815-16; D. 267-6.

(c) Green's interests at Round Hills.

37. Farming and horticulture engaged Green's attention, as formerly in Texas. He employed between thirty

eight and forty farm-hands, of whom twenty-two stayed the year round, put 150 acres under cultivation, and had three barns, with dairy and poultry farms. He raised goats for his amusement and had a great number and variety of fowl. He supplied the house and his employees with the products of the farm, but did not run it for profit. He had two large greenhouses from which fresh flowers were furnished every day for the house (R. 39). There were spacious lawns and roads through the wooded areas. Thousands of rambler roses bordered the property (R. 20, 36). He became a member of the Massachusetts Horticultural Society, which was the only society of that type of which he was a member, and had his framed membership certificate hung in his study at Round Hills. Sometimes in official documents he described his occupation as "Farmer."

Green's interest in the farm continued until his death. Neyland, Ev. 6744; D. 317; farm lands, dairy, etc., Tallouch, Ev. 7093-5; D. 346; buildings, Mass. Ex. 412 (photographs) (D. 268); goats, Stephenson, Ev. 6312-13; D. 295; variety of fowl, Ely., Ex. 366 (Ev. 9559-61; D. 398); no profit, Tallouch, Ev. 7095; D. 349; Marshall, Ev. 5474-7; D. 248; fresh flowers every day, Hill, Ev. 6903; D. 327.

Described himself as "Farmer," Texas Exs. 343 to 343-I. (Ev. 6923, line 19; D. 327; other application abbreviated in the record—see reporter's note, Ev. 6931; D. 327).

38. For several years Green maintained a photographic laboratory at Round Hills (R. 40). While he was interested more in the scientific than the artistic aspects of photography (R. 19), he had innumerable pictures made of the whaleship "Charles W. Morgan" from almost every angle, and distributed them by the hundreds. He also distributed large photographs of himself taken at Round Hills, and had moving pictures taken of him and his activities there (R. 40).

Studio, Ottorno, Ev. 6496-6502; D. 304; moving pictures, Hill, Ev. 6943; D. 326; Dixon, Ev. 7071-80; D. 337.

39. Early in 1922 Green, having become interested in radio, formed "Round Hills Radio Corporation" (R. 19,

40), of which he always kept entire control, and employed the Western Electric Company to construct two broadcasting stations at Round Hills, one with a hundred-watt broadcasting set, and the other, a five-hundred-watt set. In 1925 he added a thousand-watt transmitter (R. 40). The largest station contained besides the studio an apparatus room, a spacious reception hall, station manager's office and artists' retiring rooms. It had two steel towers 143 feet high. Green's original intention was to bring singers and musicians to the studio, but the difficulty of getting worth while programs in this way led him to arrange with the American Telephone & Telegraph Company to transmit programs from New York stations WEAF and WGBS by direct wire, and these were broadcast locally from Round Hills, the first program being transmitted July 1, 1923. This station, WMAF, or "The Voice from Way Down East," was the most powerful in New England. Green published and distributed a pamphlet entitled "The Voice from Way Down East," containing his picture and describing the station. In this pamphlet Green caused himself to be described as descended from John Howland, a cabin boy on the "Mayflower," to whom the Round Hills tract had been allotted (R. 19, 40). Green had a group of loud speakers mounted on the water tank at Round Hills Point and at his invitation the public came by thousands to hear the concerts (R. 40), news items, baseball games and prize fight broadcasts which were put on the loud speakers. He attempted to make the loud speakers carry programs to his friends on steamers plying between New York and New Bedford, but was unsuccessful. At the end of the 1927 season, when broadcasting became commonplace, Green lost his interest in this phase of radio and discontinued broadcasting, devoting his facilities to other fields of experimentation in radio and allied sciences (R. 40).

D. 329; Arst control as President and Treasurer, clerk's certificate, Ex. 7024; D. 329; and see minutes, Mass. Ex. 437 (Ex. 7014-24; D. 329); see also contributions, Mass. Ex. 410A (Ex. 5810-11; D. 264).

Description of radio: see "The Voice From Way Down East," Mass. Ex. 48 (Ex. 3750-8; D. 163); contract, Mass. Ex. 49 (Ex. 3774-9; D. 164); added thousand-watt transmitter in 1925, Mass. Ex. 199 (Ex. 6078-8; D. 280); "worthwhile progress," Bowles, Ex. 6828; D. 321; Woods, see minutes, Mass. Ex. 437 (Ex. 7014; D. 329).

Opened grounds to public, who attended loud-speaker concerts in large numbers: Neyland, Ex. 6857-8; D. 312; Price, Ex. 3734-5; D. 162; type of programs, Mass. Ex. 48 (Ex. 3768-9; D. 163); N.Y. Ex. 18 (Ex. 3786; D. 164); Mass. Ex. 143 (Ex. 6024; D. 276); volume would not carry to boats, Price, Ex. 3722, 3783; D. 161, 164.

Broadcasting continued through 1927: minutes, Mass. Ex. 437 (Ex. 7014-18; D. 329); when it became commonplace Green turned to experimenting with radio as an aid to aviation (see paragraph 41 and references, infra).

46. Green's interest had in 1927 turned to aviation and the use of the radio in connection with navigation in the air and at sea (R. 40). Through his friendship with President Stratton of the Massachusetts Institute of Technology Green had already arranged to place his radio facilities at the disposal of a unit of teachers and students from the Institute (called the "Round Hills Research Division") (R. 29, 40), for experimentation involving radio communication between the ground and air, direction finding, and the transmission of radio beams for the guidance of aviators. In connection with this project Green began in 1927 to construct on his grounds at Round Hills a fully equipped airport with facilities for hydro-aeroplanes as well as land-planes. He obtained a license in 1927 to dredge in Buzzards Bay and to fill solid the tidal tributaries on his property, so as to obtain a dry, level field. In 1927 and 1928 Green was principally engaged in this dredging and filling. In 1929 he constructed an airplane hangar and runway for airplanes, and a launchway extending 240 feet into the bay for seaplanes, and continued his work of filling and grading. In conjunction with the Massachusetts Institute of Technology, Green arranged to have the Goodyear Tire & Rubber Company supply blimps from time to time for research work and in 1929 built a blimp-dock in which to house them.

The airport contained the best equipment that could be obtained and had an A-1 rating with the United States Government. There was no charge for landing on the field, and facilities, including fuel and repairs, were furnished at less than prevailing prices. The number of planes using the field varied from 150 to 250 a year. Green employed a superintendent of the airport and established a school for aviators under this superintendent's direction, run on a cost basis (R. 40). At one time there were forty-two students in the school. Green himself went up in one of the blimps in 1930. The following year Green gave a reception on the field to Russell Boardman and John Polando who had just returned from breaking the world's distance record with a flight from New York to Istanbul, Turkey. On one occasion he had an airplane meet in the blimp dock for children at which he gave prizes. In 1929 he purchased a flying boat named "Miami Maid" for his wife and kept it on the Round Hills field (R. 40). Mrs. Green and some of the wards and friends made flights in it. Green developed a considerable knowledge of aeronautics, read books on the subject and could talk intelligently with mechanics in their own language (R. 40). It was his custom to visit the airport every afternoon for an hour or so talking over the equipment with the superintendent and talking with the aviators who landed. Round Hills Airport was maintained in first-class condition until Green's death (R. 40).

Aviation: building airport in July, 1927, Mass. Ex. 224 (Ev. 6092; D. 281); use of radio in connection therewith, Bowles, Ev. 6825-6, 6837, 6854; D. 321, 322, 324; Marshall, Ev. 5401; D. 245; Mass. Ex. 437 (Ev. 7016-18; D. 329); direction finding, Price, Ev. 3769; D. 163; nature of airport, Green's letter to Mrs. Brooke, Mass. Ex. 225 (Ev. 5303-9; D. 287); as to which see Marshall, Ev. 5630; D. 255; seaplanes and land planes, Taylor, Ev. 6967-70; D. 328; license to dredge, etc., Mass. Ex. 387 (Ev. 6260; D. 293); Green engaged in supervising work, Mass. Ex. 32 (Ev. 1255-6); launchway hangar and blimp dock in 1929, Mass. Ex. 390 (Ev. 6287-6300; D. 294) and Taylor, Ev. 6969; D. 328; Goodyear blimp, Hill, Ev. 6802-3; D. 326; Bowles, Ev. 6833-4; D. 322; and minutes of radio corporation, Mass. Ex. 437 (Ev. 7018; D. 329); best equipment, Hill, Ev. 6887-8; D. 325; airport and school operated at cost, Hill, Ev. 6887-91, 6912-13; D. 325, 327; Green went up in blimp, Hill, Ev. 6893; D. 326; Boardman and Polando reception, minutes,

Mass. Ex. 437 (Ev. 7019; D. 329); children's airplane meet, Hill, Ev. 6896; D. 326; "Miami Maid," Hill, Ev. 6892-3; D. 326; aunt sales contract, Mass. Ex. 266 (Ev. 6123; D. 2851); Green read up on subject, Hill, Ev. 6898; D. 326; daily visit, etc., Hill, Ev. 6894, 6891-2 and 6887; D. 325-6.

41. Round Hills Research Division of the Massachusetts Institute of Technology had its inception in 1925 (R. 40). Green provided the students and instructors with living quarters, laboratories and the smaller radio station on the estate, and in 1926 started collaborating with them on a series of experiments which continued until his death. Beginning with the study of the use of radio as an aid to navigation, studies were also made in the scattering of light through fog, and in measuring the intensity of sound. These experiments in turn led to experiments in the dissipation of fog as an aid to air navigation (R. 40). These experiments were successful to the point of clearing fog in an area about 3000 feet long, 150 feet wide and 70 feet high, which gave a sufficient channel over the Round Hills airport to enable the pilot to see the field while landing. In 1931 experiments were begun with a high voltage generator for the disintegration or "smashing" of the atom. Green took a personal interest in these experiments. Until the fall of 1932 it was his custom to drive into the workshops and watch the experiments being conducted (R. 40-1), and after his illness that fall he continued to consult with the professor in charge of the unit. Green continued to preside at the annual meetings of the Round Hills Radio Corporation and presented reports as to the progress of the work through 1935. On November 23, 1935, he joined with the Massachusetts Institute of Technology in issuing a formal invitation to visit the research laboratories at Round Hills. He was particularly interested in the practical usefulness of his radio station in cases of emergency, such as the Vermont flood (November 4, 1927), when relief work was directed from Round Hills station; the sinking of the Vestris (November 12,

1928), when the station aided in the rescue work; the signalling to the Graf Zeppelin on its maiden voyage (October, 1928), and the continuous contact maintained with Admiral Byrd on his first Antarctic expedition (1926-1927) (R. 41). He took the keenest interest in the experiments in fog dissipation. Certain parts of the program were carried on in collaboration with the United States Department of Air Commerce and the Army and Navy (R. 41), and Green was supplied with confidential reports of their experiments which he followed with close attention. As Green's interest in the scope of the work increased, he placed more and more facilities at the disposal of the Round Hills Division. These facilities, including the airport and radio stations, cost Green upwards of $1,250,000 between 1925 and 1933, in addition to which he made direct gifts of money to the Massachusetts Institute of Technology amounting to $140,000 in the same period. After 1933, the decrease in Green's income led him to stop making direct cash contributions to the Institute, but he continued to supply facilities to the Round Hills Division at a cost of over $100,000 (R. 41).

Inception in 1925: Bowles, Ex. 6825-6; D. 321; living quarters and facilities, Marshall, Ex. 5471-2; D. 248; Bowles, Ex. 6827; D. 321.

Experimental work started in 1926 and continued throughout Green's life: Bowles, Ex. 6832-5, 6837, 6842, 6850; D. 322-4; Marshall, Ex. 5500; D. 254; minutes of R. H. Radio Corp., Mass. Ex. 437 (*supra*; D. 329); invitation to inspect, Mass. Ex. 353 (Ex. 6203; D. 291); and Bowles, Ex. 6847; D. 324.

Nature of experiments: Bowles, Ex. 6836-42; D. 322-3.

Green took a personal interest in them: Bowles, Ex. 6845; D. 323; Marshall, Ex. 5506; D. 254; minutes, Mass. Ex. 437 (*supra*).

Visited hangar and laboratories: Bowles, Ex. 6845; D. 323; Green continued his contact with Bowles, Ex. 6838-9; D. 322; and kept apprised of developments, Bowles, Ex. 6842; D. 323; minutes of R. H. Radio Corp., Mass. Ex. 437 (Ex. 7419-24; D. 329); invitation to visit, Mass. Ex. 353 (Ex. 6203-6; D. 291) and Bowles, Ex. 6847; D. 324.

Green interested in practical usefulness: Bowles, Ex. 6837-8; D. 322 (as to which he must have confused the "Hindenburg" with the "Graf Zeppelin," as the first flight of the "Hindenburg" was not made until about the time of Green's death); most impressed with fog dissipation, Bowles, Ex. 6840-1; D. 323; collaboration with U.S. departments, etc., Bowles, Ex. 6842; D. 323.

Furnished facilities: radio, airport, machine shop, power, water and cables, Bowles, Ex. 6827-37; D. 321-2; cost to Green, 1925-1933, $1,287,922.31, Mass. Ex. 410-A (Ex. 5810-1; D. 265). It is clear that Green's contributions to this corporation financed the facilities used in this work, and do not include all of the original cost to Green, Potter, Ex. 5806-7, 5815-16; D. 264; minutes, Mass. Ex. 437 (Ex. 7016-23); Bullard, Ex. 7025. Donations to M.I.T. during same period, $140,000, Mass. Ex. 59-A (Ex. 3427-7; D. 143); after 1933, cost to Green supplying radio, airport and allied facilities, $101,731.32, Mass. Ex. 410-A (Ex. 5811; D. 265-6).

42. Early in his development of Round Hills Green became vitally interested in the history and antiquities associated with New Bedford and its whaling industry, in which his forebears had prominently figured (R. 41), and in the tradition of Round Hills, which had belonged to his family for so many generations. He took great pride in his New England lineage and the prominence of his ancestors in the whaling industry, and came to feel himself indigenous to the locality. This feeling manifested itself in numerous activities at Round Hills.

1915 joined New England Historic Genealogical Society, Mass. Ex. 83 (Ex. 5900-2; D. 271); 1920 established memorial there to his mother, Mass. Ex. 99 (Ex. 5954-5; D. 272); 1921 or 1922, commissioned Emery to write articles, Emery, Ex. 6585-3; D. 298; whaling industry, "Morgan," etc., Mass. Ex. 153 (Ex. 6033-5; D. 277); Moreland, Ex. 6749, 6654-5; D. 317, 312; Gosnold, Mass. Ex. 175 (Ex. 6052-3; D. 279); Pilgrim Fathers, Mass. Ex. 48 (Ex. 3758-61; D. 163); letter to Stern in 1924, Mass. Ex. 148 (Ex. 5278-80; D. 235); and see references for paragraphs 43 to 46, inclusive.

Felt indigenous to the locality: "our good old town," Mass. Ex. 222 (Ex. 5296-7; D. 237); dedication speech, Mass. Exs. 400 and 470 (Ex. 9733-8; D. 407); "* * * New England had to start this country and *we eventually* got down to where you live. * * *" letter of October 25, 1935, from Green to Buie, Texas Ex. 9 (Ex. 861; D. 38); joined Lantern League, Old North Church, July 1935, Mass. Ex. 351 (Ex. 6201; D. 290).

43. In 1924 it was brought to Green's attention that an d whaling ship, the "Charles W. Morgan," which at one me had belonged to some of his ancestors (R. 41), was to be dowed by a group of New Bedford citizens and presented the City, as a memorial to whaling. A contribution havg been sought from Green, he asked leave to purchase the ip himself, and when this was denied, an arrangement was de with him through which the ship was transferred to a

charitable corporation, Whaling Enshrined, Inc. (R. 41), of which Green was a life member, trustee and president, to which corporation Green conveyed, in October 1925, part of his shore land. The ship was berthed in a concrete cofferdam on the beach (R. 41), rigged and equipped as if it were in dock after a voyage. Green was president and trustee of Whaling Enshrined until his death, and donated about $10,000 annually to maintain it and its crew, consisting of a captain, mate and nine sailors (R. 41), who were on duty six months a year. He made a collection of flags which had formerly been used as signals of the New Bedford fleet, and established and rigidly maintained a schedule according to which these flags were flown from the ship, and on anniversary days he had all of them displayed. The ship was open to the public without charge, and signs directing the public to it were posted along the highways from New Bedford. It became a veritable mecca for tourists. About 125,000 people visited it yearly (R. 41), and in ten years over 1,250,000 visited it. At its dedication, July 21, 1926, Green delivered an address, published in the local press, concluding with the words "He will remain for the balance of his time on earth, in our home at Round Hills. Charles W. Morgan, we welcome you home!"

History of "Whaling Enshrined": Neyland, Ev. 6654-62; D. 312-13; certificate of incorporation, Mass. Ex. 391 (Ev. 6300-2; D. 294); life member unless he should "move away permanently," Mass. Ex. 364 (Ev. 6216-8; D. 295); Green Trustee and President until his death, Ashley, Ev. 6465; D. 303; Neyland, Ev. 6678-8; D. 314; conveyance of land to "Whaling Enshrined," McLeod, Ev. 6567-9; D. 297; rigging and equipment, Neyland, Ev. 6672, 6683-4, 6709-12; D. 313, 314, 315; Mass. Ex. 192 (Ev. 6070; D. 279); annual donations, Mass. Ex. 60 (Ev. 3446-7; D. 147); captain and crew, Marshall, Ev. 5407; D. 245; signal flags and rules for flying them, Pltf. Ex. 356 (Ev. 9517-18; D. 466); Neyland, Ev. 6728-9; D. 316; Mass. Ex. 160 (Ev. 6040; D. 278).

Open to the public without charge: Marshall, Ev. 5407; D. 245; visitors, Mass. Ex. 373 (Ev. 5404-6; D. 245).

Dedication address: Mass. Exs. 400 and 470 (Ev. 9733-8; D. 467).

44. In connection with the whaleship "Morgan" it was originally Green's intention to construct in its immediate

vicinity a small whaling village and museum (R. 41). In December, 1924, he salvaged the mast of the wrecked whale ship "Wanderer" and set it up at Round Hills. In 1924 and 1925 he laid the foundation of a museum close to the "Morgan," but shortly afterward filled it in and never completed that project (R. 41). In the years 1925-1927, however, he purchased an old blacksmith shop and a candle works in New Bedford and had them moved to Round Hills and set up near the "Morgan." He also made a great collection of lithographs, paintings, numerous shipping and whaling prints, whales' teeth, scrimshaw work and photographs dealing with the whaling industry, besides acquiring an extensive historical and genealogical library. Apart from the whaling village, but in line with his interest in colonial history, he purchased in 1924 an old windmill in Rhode Island and had it set up at Round Hills (R. 36).

Whaling Village and Museum: Neyland, Ev. 6672, 6716-17; D. 313, 314; Taylor, Ev. 6967; D. 328; Fla. Exs. 355 (Ev. 9500-11; D. 396), 356 (Ev. 9517-19; D. 396), 357 (Ev. 9521-3; D. 396), 358 (Ev. 9530-1; D. 397), 359 (Ev. 9533-4; D. 397); collection of pictures, etc., Emery, Ev. 6805, 6835; D. 299, 301; library, see paragraph 45, *infra*; windmill, Emery, Ev. 6385-9; D. 293.

45. Green purchased and kept in his library at Round Hills House a costly and well-chosen collection of standard classical literature, in addition to which he had many volumes pertaining to the history and genealogy of New Bedford and Old Dartmouth, books of value as reference works in research into local history and genealogy and original editions of ancient books relating to the history of New England, published mostly in London. He chose particularly books dealing with whaling and with Gosnold's voyages, in one of which Gosnold landed at Round Hills in 1602. He had no special collection of books on any other subject with the exception of stamps and numismatics, more particularly he had no collections and only one or two isolated books relating to Texas or New York, and

none relating to Florida. Green gave a great deal of personal attention to the collection of these books, sought expert advice in selecting them and read widely in them, particularly those dealing with whaling, in which subject he became well versed. Green employed a local historian and genealogist to write monographs upon different subjects connected with Round Hills, including Gosnold's visit there in 1602, the history of Round Hills farm and its occupants and the history of the colonial windmill reconstructed upon the estate. This genealogist was the author of "The Howland Heirs," a book which Green prized as an interesting and authentic history of his mother's side of the family (R. 41).

Library: classics, see Mass. appraisal, Texas, Ex. 326 (Ev. 3867-89); histories of New Bedford, Dartmouth, etc., Mass. Ex. 418 (Ev. 6388-92; D. 299) and appraisal, Ev. 3855-66; see also letters between Green and book dealers and others, showing Green's personal attention to these subjects, and the cost, Mass. Exs. 155, 156 and 157 (Ev. 6035-7; D. 277-8); Mass. Exs. 161, 162, 163, 165 and 166 (Ev. 6041-4; D. 278); Mass. Exs. 174 and 175 (Ev. 6051-2; D. 279); Mass. Ex. 179 (Ev. 6057; D. 279); ancient books, Mass. Exs. 167 (Ev. 6044; D. 278) and 171 (Ev. 6048; D. 278); reference books on whaling, Mass. Exs. 170 (Ev. 6049; D. 278), 176 (Ev. 6053; D. 279), 177 (Ev. 6056; D. 279), 180 (Ev. 6059; D. 279), 182 and 183 (Ev. 6061-2; D. 279); and Fla. Ex. 360 (Ev. 9544-5; D. 397).

No similar collection with respect to any other State or section of the country: Emery, Ev. 6393-4; D. 299.

Discussed them and ordered monographs: Emery, Ev. 6387, 6393-4, 6384-6; D. 299; windmill, Emery, Ev. 6385-6; D. 299; "Howland Heirs," by Emery, Ev. 6416; D. 301; considered authentic by Green and prized by him, Carlson, Ev. 5860; D. 260; Emery, Ev. 6438; and, concerning his grandfather E. M. Robinson, see Mass. Exs. 322 and 322 A (Ev. 6181-8; D. 289).

46. Green in October 1924, upon his personal application, became a member of the Massachusetts Society of the Sons of the American Revolution, basing his claim to membership upon lineal descent from Colonel David Mosley of Westfield, Massachusetts. His certificate of membership in this Society was framed and hung in the Library of the Round Hills House. In 1925, he became a member, upon his personal application, of the Society of Colonial Wars in the Commonwealth of Massachusetts, basing his claim

to membership upon lineal descent from William Robinson, Deputy Governor of Rhode Island. In both of his applications for membership in these Societies, Green declared under oath that his residence was South Dartmouth, Massachusetts. Green placed a marble tablet to the memory of his mother in the rooms of the Massachusetts Historic Genealogical Society in Boston in 1920. Green never exhibited any interests similar to these in any part of the country other than in Massachusetts (R. 41).

Mass. Societies of S.A.R. and Colonial Wars, Mass. Exs. 367 and 369 (Ex. 6224-31; D. 2924); certificate in Library, see appraisal, Texas Ex. 326 (Ex. 3859-A) and Emery, Ex. 6407; D. 3007; marble tablet, Mass. Ex. 99 (Ex. 5934-5; D. 272).

47. Green took great interest in the education of his wards. It was his desire that they should so far as possible attend Wellesley College in Massachusetts. He sent several of them there and to other colleges and preparatory schools in Massachusetts—Walnut Hill School, Wheaton College, House-in-the-Pines, Norton, Massachusetts, and [illegible]ton University. On December 17, 1923, Green and his sister entered into an agreement with Wellesley College to donate $500,000 for a building to be erected in memory of their mother. Green, as well as his sister, made his donations in annual instalments of $50,000 in the five following years. Over the same period, Green and his sister made a joint donation of $250,000, in memory of their mother, to St. Mary's School, an Episcopal Convent School in Peekskill, New York, where one of his wards was educated (R. 20). Green's mother was a member of the Episcopal Church.

Preference for Massachusetts institutions: Wellesley, Briggs, Ex. 6765-6; D. 318; telegram, Mass. Ex. 2-A (Ex. 6114-15; D. 2843); Sullivan, Ex. 7580; D. 3353 and others, Marshall; Ex. 5302-8; D. 244; Stevenson, Ex. 6369, 6321; D. 293, 295; letter to Dorothy Marshall recommending eastern schools, Mass. Ex. 126 (Ex. 5268-71; D. 235).

Donations to Wellesley and St. Mary's: Mass. Exs. 59-A and 59-B (Ex. 3425-9; D. 1453); agreement with Wellesley, Mass. Ex. 93 (Ex. 7473; D. 1429) and with St. Mary's, N.Y. Ex. 41 (Ex. 2240; D. 1313); Mrs. Hetty Green on Episcopalian, N.Y. Ex. 224 (Ex. 7700-1; D. 1961).

48. In the last two years of his life, Green's physical activities at Round Hills, as elsewhere, became more restricted and he was confined more to indoor occupations. He had given up stamp collecting in 1927 (R. 33), but in 1935 he started a new Twentieth Century collection which, with his coin, currency and jewel collections and his jigsaw puzzles, occupied most of his time when he was confined to his room (R. 47, 21). Green was a very sick man the year before he died, but his chief interests were still in the scientific and historical projects that he sponsored at Round Hills and at Round Hills alone.

Green's illness restricted activities: see references under paragraph 36, *supra*.

Gave up stamps in 1927: letter, Green to Warburton, Mass. Ex. 342 (Ex. 5323-5; D. 230); Potter, Ex. 5381; D. 157; Marshall, Ex. 5387-7; D. 243.

Started new Twentieth Century collection in 1935: Marshall, Ex. 5387-3; D. 243; Potter, Ex. 5381; D. 157; letter to Newman, N.Y., Ex. 80 (Ex. 5340-3; D. 151-5).

Other collections: coins, Mass. Ex. 342, *supra* (Ex. 5323-5; D. 230); currency, Keyes, Ex. 7088-9; D. 347; jewels, Marshall, Ex. 5531-3; 5387-5504, 5504-5; D. 250, 253, 256; worked mostly on stamps and coins, Stevenson, Ex. 6315-18; D. 296); read philatelic and numismatic publications, Carlson, Ex. 5803, 5807-9; D. 269, 270; Mass. Exs. 311 and 312 (Ex. 6178-4, 5331-3; D. 288, 289); jig-saw puzzles, left for $118.03 worth, Mass. Ex. 311 (Ex. 5325-6; D. 230).

Continued interest in scientific and historical projects at Round Hills: scientific, see references under paragraph 36, *supra*; farm, Neyland, Ex. 6744; D. 317; historical, Neyland, Ex. 6745-6; D. 317.

Taxes in Massachusetts.

49. In Massachusetts there has been in force since 1917 a personal income tax at very high rates upon income from investments. The statute provided from that time until it was amended in 1929 that every person who was "an inhabitant of the commonwealth at any time between the first day of January and the thirtieth day of June, both inclusive, in any year" should make a return and pay the tax. The provisions of this statute were called to Green's attention by his attorney in January, 1930, at which time Green had live

ing quarters in Massachusetts in the form of the yacht "United States." Thereafter and until 1934 Green did not go into Massachusetts before July 1st in any year, habitually arriving early in the morning of that day, and did not stay there after the 18th of December in any year. He explained on many occasions that he adopted this practice in order to avoid liability for Massachusetts taxes. The Massachusetts statute was amended in 1929 eliminating the words "between the first day of January and the thirtieth day of June, both inclusive," and Green's attorneys so advised him. Thereafter in both 1934 and 1935 Green went to his home in Massachusetts in June, but did not remain there for as much as six months in either year. He stated on numerous occasions that he could not stay in Massachusetts as much as six months in any year on account of Massachusetts taxes.

Massachusetts income tax: Acts of 1916, c. 269, sec. 23; Acts of 1929, c. 361, sec. 2; amending and sec. 23; extract from General Laws, c. 62; Copied at Ex. 9590-9680; D. 300; called to Green's attention in January, 1916; Mass. Ex. 74; with which see Mass. Exs. 70 and 70-A thru 70-G; D. 215-161; amendment called to his attention in 1930; Mass. Exs. 287 and 288 (Exs. 5477-B, 5478-B); D. 225; Ballard, Ex. 7020-30; 7065; D. 329.

Green's [illegible] see Tables A and B and supporting references to Evidence; [illegible] Massachusetts Requests to Find; left on June [illegible] the morning of July 1st each year prior to 1934; Stafford, Ex. 4965-A; D. 297; Mass. Ex. 18; Ex. 515-2011; 1934 and 1935 arrived in June; see Tables A and B and supporting references to Evidence; Prince attached to Massachusetts Requests to Find; said his reason for all of the foregoing was to avoid taxes; Marshall, Ex. 5364-A; D. 242; Hoagland, Ex. 5709-10, 5765-6; D. 260, 263; Stafford, Ex. 4980-[illegible]; D. 293; and numerous other witnesses.

50. In 1928 the Massachusetts Commissioner of Corporations and Taxation personally interviewed Green at Round Hills on the question of Green's liability to income taxation as a resident of Massachusetts. Green replied that he had his legal residence at Terrell, Texas, and was not at that time prepared to file a return or pay income taxes to Massachusetts as a resident thereof (R. 424).

Long, Ex. 7078-79; D. 358-9.

51. Green at no time filed an income tax return or paid any income tax to Massachusetts (R. 21), and after this interview with the Massachusetts Commissioner he received no demand that he do so although one was sent to him shortly before his death (R. 42, 43).

No return filed, Potter, Ev. 3185; D. 126; demand in 1936, Long, Ev. 7065-6; D. 338.

52. In or about 1928 Green was tendered a nomination for Congressman by the local Republican leaders, but refused (R. 27) on the ground that the act of registering himself as a resident of Massachusetts would cost him a great deal more in taxes than the salary would be worth.

Winslow, Ev. 2725, 2729-30; D. 89.

Presence and Activities in Massachusetts Undiminished by Sojourns in Florida.

53. In the winter of 1923 Green for the first time went to Florida. Thereafter he developed the habit of going there for several months each winter and spring, living first on a boat and later in a house on Star Island at Miami Beach which he purchased and reconstructed. These trips to Florida did not diminish the amount of time which Green spent at Round Hills nor the activities pursued there. The trips were made in that portion of the year in which Green had formerly spent his time in New York and Texas, not in Massachusetts. In the last ten years of Green's life, during which his house at 46 Star Island was available at all times (R. 44), Green spent a substantially greater proportion of his time at Round Hills than he had done theretofore. All of his intimate and personal belongings remained at Round Hills (R. 41, 42, 45).

Florida trips: as to time, see diagram at end of Mass. Brief proper, also Tables A and B and supporting references to Evidence attached to Massachusetts Requests to Find.

Attitude towards Massachusetts.

54. Green chose Round Hills as the place for his principal home because it was already available through its ownership by him and his sister, was regarded by him with pride as his ancestral estate (R. 51, 35), was endeared to him by its associations with his boyhood and his mother, and because of its location on the seashore (R. 35) and its adaptability to development as a showplace and large country estate.

Ownership, pride and boyhood associations: see reference "Ancestral estate," paragraph 9, *supra;* looking for spring, Davis, Ev. 6528-9; D. 306; Marshall, Ev. 5354-5; D. 241; his interest in his Dartmouth and New Bedford background, Mass. Exs. 247, 248, 249 and 250 (Ev. 6110-14; D. 283-4; paragraph 42, *supra;* regarded fortune as a trust to establish a memorial to his mother at Round Hills, Neyland, Ev. 6671-2, 6695, 6738, 6749; D. 313, 317, 318; liked the seashore, Bullard, Ev. 7034; D. 329; showplace, letter to Prescott in 1919, Mass. Ex. 86 (Ev. 5243-9; D. 233).

55. From the beginning of Green's occupancy of Round Hills he intended to occupy it as his permanent and principal home (R. 54) notwithstanding that he expected to be absent from it during the first six months of each year. He intended always to come back, and said that he hoped he would be at Round Hills when his time came to die (R. 42). The reason why Green did not openly acknowledge Round Hills as his legal residence was that he wished to avoid paying taxes there (R. 42).

Permanency: its physical characteristics, paragraphs 17 to 20, *supra;* declarations, see references under paragraph 10, *supra.*

Tax avoidance, see paragraph 49, *supra.*

Mass. Ex. 77 (Ev. 5234; D. 232), October 28, 1918: "* * * I hope some time to make Massachusetts my home * * *"

Mass. Ex. 86 (Ev. 5248; D. 233), June 28, 1919: "Our intention is to make the place somewhat of a show place. I am growing plants of every known variety."

Mass. Ex. 110 (Ev. 5123-5; D. 219): Letter, Green to the Assessors of Dartmouth, Massachusetts, May 20, 1921: "* * * my intentions are to remain with you * * *"

Mass. Ex. 121 (Ev. 5259-60; D. 234), June 17, 1922: "* * * with the understanding that if I returned it to you it would be repacked and shipped to me at my residence in South Dartmouth, Mass."

Mass. Ex. 48 (Ev. 3751; D. 163), Brochure, "The Voice from Way Down East," describing Green's radio station, published with

his authorization in 1923 (Ev. 3751): "When the Mayflower landed at Plymouth on December 21, 1620, she had as cabinboy a lad named John Howland. Five years later, having come to man's estate, young Howland was allotted a tract of land on the west side of Buzzard's Bay, running from the site of the present city of New Bedford to the open sea. At the southern end of this great tract was a rocky point whose two rounded hillocks were a landmark to sailors. Eventually this portion of the tract was known as Round Hills Farm, and as such it has remained within the Howland family continuously, its present owner being Edward Howland Robinson Green. Within recent years Colonel Green has established there his summer home 'Rouad Hills House.'"

Mass. Ex. 148 (Ev. 5279-80; D. 235), June 30, 1924: "* * * For your information, I will state that ever since the Pilgrims my address has been as follows: E. H. R. Green, Round Hills Farm, South Dartmouth, Mass."

Mass. Ex. 154 (Ev. 5282; D. 235-6), October 13, 1924: "* * * The old Howard Regulator, purchased from you a number of years ago, is still in my possession and I had it shipped from Texas to my home here in South Dartmouth * * *"

Mass. Ex. 367 (Ev. 6224; D. 292), October 27, 1924: Application for membership in Massachusetts Society of Sons of the American Revolution, containing affidavit stating that Green's residence was South Dartmouth, Massachusetts.

Neyland testimony: In 1924 Green said, "I am so interested in this place that I just hope when my time comes I will be in Round Hills when I die" (Ev. 6684; D. 314) (found by the Master as a fact, R. 42).

Mass. Ex. 211 (Ev. 5294-6; D. 237), April 2, 1925: "* * * I have had much experience with tile at my home here at South Dartmouth * * *"

Mass. Ex. 369 (Ev. 6231; D. 292), October 19, 1925: Application for membership in Society of Colonial Wars in Commonwealth of Massachusetts, containing affidavit stating that Green's residence was South Dartmouth, Massachusetts.

Mass. Ex. 205 (Ev. 6080-2; D. 280), May 5, 1926, Letter, Green in Marlin, Texas, to Bullard in New Bedford: "* * * the first of June when I shall start trying to migrate back to the 'Land of the Pilgrim Fathers.'"

Mass. Ex. 470 (Ev. 9736; D. 407), July 22, 1926, Dedication Speech of the whaleship "Charles W. Morgan": "* * * Our old friend has returned to us where he will remain for the balance of his time on earth in our home at Round Hills. 'Charles W. Morgan', I welcome you home!"

Mass. Ex. 222 (Ev. 5296-7; D. 237), June 8, 1927: "Please extend to the Town of Dartmouth and its citizens my hearty congratulations on the anniversary of its birthday. Kindly welcome all the people who are perpetuating and continuing the memory of our good old town * * *"

Mass. Ex. 371 (Ev. 6236-7; D. 293), July 29, 1929: Application for membership in American Numismatic Society, giving address as Round Hills House, South Dartmouth, Massachusetts.

Testimony, Keyes, Coral Gables, Florida, April, 1931: Green said, "I am going back to Massachusetts." Witness said, "Why don't you make this your home?" Green replied, "Well, this is just a place I come to reside in the wintertime. I have a beautiful estate up there." Ev. 7692; D. 337.

Professor Bowles, of Massachusetts Institute of Technology, testimony: "Prior to the 1932 illness, Green said the doctors told him to get away from Round Hills if he wanted to live; that the weather here in New England was not right for him, and Green said that he was going to go to Round Hills and continue to go to Round Hills, and if he was going to die there he was going to die there and that was that, because he wanted to be there" (Ev. 6846-7; D. 324).

Mass. Ex. 332 (Ev. 5319-20; D. 239), November 8, 1932: "My permanent address for your records should be as follows: E. H. R. Green, Round Hills House, South Dartmouth, Mass."

Hill, Superintendent of Green's airport: "About 1932, Green said he would like to spend his remaining days at Round Hills" (Ev. 6900; D. 326).

Texas Ex. 387 (Ev. 7188-9; D. 98), April 1, 1935: Green's deposition that for about 30 years he lived in Terrell, Texas, which "gave me the residence of Terrell, Texas * * * and I still claim it * * *," that he spent about six months out of the year as a rule in Massachusetts and spent substantially "the remaining six months between Miami, New York, and either Asheville or Lake Placid, New York."

Texas Ex. 9 (Ev. 862; D. 38), October 25, 1935, Letter, Green in Massachusetts to Buie in Texas: "* * * New England had to start this country, and *we eventually* got down to where you live."

56. Green regarded and never ceased to regard Round lls as his ancestral home, his preeminent headquarters, seat of his principal interests, the place where his most asured and intimate personal possessions were kept and place to which, when he was absent, he intended to re-n. He regarded Round Hills as his real, permanent and ncipal home. It stood first in his affections.

Returning to Round Hills, which stood first in his affections: Mass. Exs. 138 (Ev. 6000-1; D. 275), 205 (Ev. 6080-2; D. 280), 197 (Ev. 6071-2; D. 280), 240 (Ev. 6098-9; D. 282); Hill, Ev. 6898-9; D. 326; Bowles, Ev. 6846-7; D. 324; Neyland, Ev. 6683-4; D. 314; Stafford, Ev. 4993; D. 209.

Summary and Conclusion.

. *a.* At the time of his death and continuously for ty-five years preceding it, Green had no dwelling place exas and did not regard Terrell or any other place in s as a home. When he decided to establish his home at d Hills and began the development of the property for that purpose in 1917, he formed the definite in-on never to return to Texas to live. It was his desire

to escape taxation that caused him to claim Terrell, Texas, as his legal residence.

b. During the last fifteen years of his life, if Green regarded either his apartment in the Waldorf-Astoria or his apartment in the Sherry-Netherland Hotel as a home in any sense of the word, he regarded it as a subordinate home, and after the establishment in 1923 of his usual routine of spending part of his time in Round Hills and part in Florida, with stops at New York between, he came to regard his New York apartment as a mere stopping-off place on his trips north and south, and not as a home in any sense.

c. Upon the death of his mother and his marriage, Green began to establish his permanent principal home at Round Hills, South Dartmouth, Massachusetts. It became his permanent principal home and pre-eminent headquarters in July, 1921, and remained such throughout his lifetime. It contained his *lares* and *penates* and all the indicia of home. It was the seat of his principal interests. From July, 1921, to his death, Green regarded Round Hills as his principal home and intended that it should continue to be his principal home.

d. In 1927 Green set up an establishment at 46 Star Island, Miami Beach, Florida, and thereafter spent an average of four and a half months each winter there because he wished to get away from New York and liked the Florida climate and thought that it would be good for his health. It did not contain his *lares* and *penates*. It contained little that was personal or intimate to Green. If at any time Green regarded his house at Star Island as a home in any sense of the word, he regarded it as a subordinate home and he never had any intention of making it his principal home.

e. Upon every consideration—of time spent there, physical characteristics, persons and things there, things done

there, Green's attitude toward it, and his attitude toward other places, and his intention when absent to return—Round Hills, Massachusetts, became in July, 1921, Green's principal home and his domicile, whether his prior domicile had been in Texas or in New York; and Round Hills remained his principal home and his domicile until his death on June 8, 1936.

Part II.

Reprint of Master's Findings of Fact (R. 19-57) with Passages Excepted To Italicized and Commented On.

In this Part II of the Appendix, there is reprinted the portion of the Master's Report (R. 19-57) which contains the Findings of Fact. The Master's pagination has been retained, and every Finding of Fact to which an exception has been taken by any of the parties is printed in italics, with footnotes containing Massachusetts' contention in respect to the exception. The findings of fact so italicized and annotated follow:

[*19] *** FINDINGS OF FACT.**

Ancestry and Education.

Edward Howland Robinson Green was born at the Langham Hotel, London, England, on August 22nd, 1868, the son of Edward Henry Green and Hetty Howland Robinson Green (née Robinson). His parents were both domiciled at Bellows Falls, Vermont, where Edward Henry Green died on March 19th, 1902, and where he was buried.

On both his father's and mother's side, Green was of Colonial ancestry; his mother's ancestors—the Howlands—had settled in New Bedford, Massachusetts, and acquired extensive land grants in the adjacent Town of Dartmouth in the 17th Century, of which about 130 acres were inherited by Hetty Green. She was born and raised in New Bedford and her nearest relatives were there and in South Dartmouth. The fortune which she had inherited from her Howland and Robinson ancestors had its origin in the whaling industry of New Bedford and at the time of her death in 1916, it had grown to $67,000,000 and under her Will became the property of her surviving children—her son, Edward H. R. Green, and her daughter, Sylvia Ann Howland Green Wilks.

Green's education was obtained in the public schools of Vermont and New York, and in the years 1886 and 1887 he attended Fordham College, New York. Later, he developed by private study a wide fund of scientific information. His tastes were not artistic or literary, he had an excellent memory, a flair for experimentation and manifested a keen interest in astronomy, geology, electricity, photography, radio and X-ray, established an elaborate physical laboratory at Terrell, Texas, which he subsequently gave to a school at Denton, Texas, constructed an observatory on his house in Dallas and made many improvements in railroad transportation. At Round Hills, Massachusetts, he conducted alone and with the Massachusetts Institute of Technology various investigations and experiments for radio communication with airplanes, long distance photography, television, moving pictures, fog dissipation and aviation.

Personal Characteristics.

In his prime, Green was six feet four inches tall and weighed nearly 300 pounds. At the age of twenty-one, his left leg was amputated above the knee as the result [*20] of an * accident in youth and thereafter he used a cork leg. Notwithstanding this handicap, he was strong, robust and energetic until November, 1921, when he suffered an acute traumatic arthritis in the knee of his right leg, which thereafter greatly interfered with his movements. He was always interested in outdoor sports and amusements; in Texas, he had the first automobile and encouraged racing, participated in minstrel shows and dramatics, aided in the organization of a military company, and organized a baseball and fishing club. In New York, he was fond of attending the theater and baseball games until incapacitated, and in Massachusetts and Florida, *took an active interest in*

* Original pagination of the Master's Report is retained.

yachting and boating, owned a number of boats, and gave trophies for water sports (Fla. Exc. 2).

Footnote 1:

Fla. Exc. No. 2 claims that Green lost interest in boating in Massachusetts and retained interest in boating in Florida.

Massachusetts disagrees with this claim of Florida; although he always kept the boats in condition in both places, he did not himself use the boats in either Massachusetts or Florida during the latter years, when it was difficult for him to be lifted into the boats:

Very hard for him to get into boats and easier to get into automobiles: Berglund, D. 262, Ev. 5716-17.

Green's letter to Newcomb, dated April 12, 1929, Mass. Ex. No. 265, D. 254: "It has been such a punishment for me to go boat riding * * *"

In the later years, Green was rarely, if ever, in the boats: Marshall, D. 255, Ev. 5610; see also Rodearmel, D. 354, Ev. 8359; Carlson, D. 270, Ev. 5876.

Fla. Exc. No. 2 also claims that Green lost interest in giving trophies for water sports in Massachusetts.

Round Hills trophies for outboard motor races were not given up because Green lost interest, but because the New Bedford Yacht Club decided that there was not enough local enthusiasm for such races: Marshall, Ev. 5645.

While personally modest and unassuming, he enjoyed publicity and did things in a grandiose way. *He joined clubs, societies and social organizations in every community where he dwelt but never attended them* (Fla. Exc. 1; N.Y. Exc. 47).

Footnote 2:

Fla. Exc. No. 1 claims that Green's interest in clubs, societies and social organizations in Massachusetts declined and that his interest in such clubs, societies and social organizations in Florida continued.

The fact is that Green never at any time had much real interest in the type of organization to which Florida refers, although he was always a willing joiner wherever he happened to be. This willingness to join met a ready response from the Floridians and the winter colony there, but the fact of his joining should not be given any great significance. The Master's finding that he joined everywhere but never attended is clearly correct: Marshall, Ev. 5449-50, D. 247, and Ev. 5634. He did not even go into the Beach Club in Florida: Mansfield, Ev. 9726-7, D. 407. The fact that he stopped joining in Massachusetts would indicate that there was nothing left to join, rather than that he had lost interest in Round Hills as a home. The reason he resigned from the Wamsutta Club in New Bedford was that a friend of his had been expelled by the Club: Marshall, Ev. 5633-4, D. 256. Green joined the Lantern League of Old North Church, Boston, Massachusetts in July, 1935: Mass. Ex. 351, D. 290, Ev. 6201.

New York Exc. No. 47 states that the Union Club of New York City was an exception to the rule that Green did not attend clubs. The only support for this exception is a reference to the Evidence at pp. 9347-8, where the witness states that he was not absolutely certain.

but that between 1906 and 1930 he thought he had seen Green at the Union Club once or twice.

He cared nothing for society and never went to social functions (Fla. Exc. 3);

Footnote 3:

Fla. Exc. No. 3 does not dispute the finding that Green "cared nothing for society and never went to social functions," but excepts because the Master failed to find that Green manifested an interest in social functions given by himself and wife in Florida.

We respectfully submit that the Evidence shows that the one really interested in those functions was not Green, but Mrs. Green: Marshall, Ev. 5605, D. 254; Bell, Ev. 8345-6, D. 354.

his preference always was for the "man in the street" and for society *en masse*. He mixed largely with local residents of the places where he lived and made himself very popular, was always jovial and genial, democratic and public spirited. His close friendships were those formed in the early days in Texas. He had inherited from his New England ancestors a fondness for the water and seashore, and throughout his life he was also intelligently interested in things horticultural and agricultural, established an experimental farm and floral company in Texas and surrounded his places at Round Hills and Star Island with thousands of roses and rare plants.

He had no religious affiliations but contributed substantial sums to charitable organizations wherever he happened to be (Fla. Exc. 4).

Footnote 4:

Fla. Exc. No. 4 excepts because the finding "does not inform the Court of the decline of Green's interest in and contributions to charitable organizations in Massachusetts, and his continued interest in and contributions to religious and charitable organizations in Florida."

To support this exception, Florida lists certain limited classes of contributions made by Green to organizations in Florida and Massachusetts after 1928. The classification used overlooks the bulk of Green's philanthropic contributions during that period. The total contributions made by Green to all organizations in Massachusetts after 1928 was $100,305 (D. 144), and to all organizations in Florida was $18,743 (D. 146-7). The Massachusetts contributions of $100,305 do not include contributions of $99,661.18 made to Whaling Enshrined after 1928 (D. 148).

In 1934, 1935 and 1936 Green's contributions to organizations in Florida totaled $1600 (D. 147). In the same years, he contributed

$26,948.16 to Whaling Enshrined (D. 148), and continued to d
the use of his facilities at Round Hills to Massachusetts Institu
Technology. Up to the time of Green's death, seven men on the
staff were engaged in research at Round Hills: Bowles, Ev. 6848, D

He made large contributions to the Massachusetts Insti
of Technology at Cambridge, Massachusetts, for scien
research and to Wellesley College in Massachusetts and
Mary's Girls School at Peekskill, New York, jointly with
sister, Mrs. Wilks, as a memorial to their mother. In
later years, he enjoyed the society of young girls and
tween 1919 and the time of his death, he had a number
protegées, *most of whom were daughters of old Te
friends and of acquaintances in Massachusetts* (Tex. F
1);

Footnote 5:

Massachusetts acquiesces in the exception of Texas to the effect
none of Green's protegees were daughters of acquaintances in Ma
chusetts.

sent them to private schools and colleges; had them spen
portion of their vacations with him and his wife at Rou
Hills, and supplied them with clothing, jewelry and au
mobiles and carried on an extensive correspondenc
[*21] in which he kept himself advised of their pro
ress and gave them much good advice. He w
familiarly known to them as "Uncle Ned."

Acquisition and Accumulation of Wealth.

In his latter years, when physical infirmities and illne
restricted his activities and he was compelled to spend muc
of his time indoors, he developed many hobbies, became
collector of rare stamps, and later of rare coins and cu
rency, and jewels and at the time of his death had in h
apartment in New York, in the banks of New York and in th
vaults at Round Hills collections valued at nearly $4,000,00
(75-76). He usually travelled with 28 trunks containin
his miscellaneous collections and at his Round Hills an

Star Island homes had an immense number of jig-saw puzzles and moving picture films.

Aside from his railroad activities in Texas between 1892 and 1911, he was never in any active business or devoted to the making of money (N.Y. Exc. 58),

Footnote 6:

N.Y. Exc. No. 58 claims that the Master should have found that Green was very active in business in Texas and New York, and gave the same his personal attention until he was incapacitated in 1921, after which his business affairs were principally conducted through his office in New York City, and that he was devoted to the making of money throughout his life.

Massachusetts submits that the Master's finding is correct. Green's real interest was not in the business field. His career in New York was never that of a business man in the ordinary sense of the term. During his mother's lifetime, he went to the office where her affairs were managed almost every day and spent from fifteen minutes to two or three hours there: Potter, Ev. 3094-5, 3476-7, D. 124, 149. For a part of almost every working day, he went to the Seaboard Bank. He made purchases of securities through the Bank and talked to the Bank officers about baseball and the theater: baseball, Cleverley, Ev. 4230, D. 170; De Vausney, Ev. 3693-4, D. 160-1; theater, Cleverley, Ev. 4234-5, D. 170; security purchases, De Vausney, Ev. 3690-1, D. 160; Ev. 3705-6; Cleverley, Ev. 4252-3, D. 170.

After Hetty Green's death, Green was not at the New York office for more than four or five hours a week altogether: Potter, Ev. 7886-7, D. 405. There was never any great business or investment activity on the part of Green or the New York office. Very few sales were ever made. For the most part, mortgages and other securities were retained until maturity or redemption, when the proceeds were reinvested, largely in tax-exempt securities. After November, 1921, when it became difficult for Green to get about, he never went to the New York office, and he did not request or receive regular reports from the office concerning his securities or even an inventory of his investments. He did, however, require the office to send him a monthly statement of the amount of cash on deposit in his checking accounts, which was the information in which he took the most interest. (No great investment activities, few sales, etc., Potter, Ev. 7862-5, D. 403; business routine of the office, collecting income, Potter, Ev. 7857, D. 403; correspondence, Potter, Ev. 3094-5, D. 124, and Ev. 3392-9, D. 139; accounting, Potter, Ev. 3080-3, D. 123; and Ev. 7871-2, D. 404; tax work, Potter, Ev. 3463-6, D. 149, and Ev. 3473-4, D. 149; no regular reports on investments and no inventory, Potter, Ev. 7865, D. 403; monthly statement of checking account balances, Potter, Ev. 7865-6, D. 403; Wilks Ex. No. 3, D. 403.)

and although maintaining an office in New York City, he relied largely upon an efficient manager and never visited this office after his serious illness in 1921. His large fortune was the result of inheritance, tax avoidance and income accumulation. While in Texas, he was largely dependent upon his mother for support and upon coming to New York in

1911, his mother gave him stock in one of her Holding Companies worth about $500,000. When he inherited his interest in his mother's estate after her death in 1916, he was 48 years old and unmarried. Under her Will, he became entitled to the residuary estate of his Grandfather Robinson, which was worth about $4,500,000, and to the income from one-half of his mother's residuary estate, which was kept in trust for a period of ten years after her death, and if he survived, to one-half of the estate outright. This one-half interest in 1926 had a value of about $33,000,000, and his income from 1917 on was from *$1,450,000 to $2,200,000, and over a period of years averaged in excess of $1,500,000* (N.Y. Exc. 60).

Footnote 7:

N.Y. Exc. No. 60 refers to a typographical error in these figures, which have since been corrected by the Master to read as printed above.

Substantially all of his income was spent by him for his personal expenses, in the building and maintenance of his costly dwellings, upon his boats, hobbies and experiments, including the radio station, airport and Whaling Memorial at South Dartmouth. During all of this period his Federal income taxes were very large, but aside from these and his real and personal property taxes in the various jurisdictions where he dwelt, and his poll taxes in Texas, he paid no income or personal taxes to any State, and thus, by tax
[*22] savings and conservative investments, accumulated an estate estimated at over $42,000,000 at the time of his death. (D. 118-157.)

On July 10th, 1917, he married at Highland Park, Illinois, Miss Mabel Emerson Harlow, who had been his companion and housekeeper for many years in Texas and New York. Prior to the marriage, they had entered into an antenuptial agreement by which she released her rights in his estate. There were no children of the marriage and at the time of his death her interest in the estate was confined to whatever

rights she may have had under the community laws of Texas as asserted in her answer.

Under his Will executed in 1908, his mother was made beneficiary and upon her death the whole estate was devised to his sister, Mrs. Wilks. The proceedings instituted for the probate of this Will in the Surrogate's Court of Essex County, New York, while the hearings in this case were in progress, resulted in a settlement of the controversy between the widow and sister and a release by Mrs. Green of all claims upon her husband's estate.

Domiciliary Periods of His Life.

With reference to domicile, Green's life, after he had reached man's estate, may be divided into three periods: (1) his early manhood in Texas from 1892 to 1911; (2) his business career in New York from 1911 to 1921, and (3) the period of decline and pursuit of health from 1921 to his death in 1936.

The first period when he was engaged in the railroad business in Texas was probably the happiest of his life; the second covers the years when he was called to New York to take up his mother's burdens in the management of her vast estate until her death in July, 1916, the settlement of her estate in accordance with the provisions of her Will, of which he was Executor and Trustee,) until he was stricken in November, 1921, and the third, or twilight years, when he was unable to pursue the outdoor existence he loved, when he was cut off from his old friends in Texas, unable to take long trips except for health, unable to go to his office in New York City or to give more than a passing attention to business affairs, and when he found himself in possession of an enormous fortune, which he began to spend freely in the erection of beautiful homes at South Dartmouth and Star Island and in the cultivation of his hobbies.

[*23] *** Life in Texas from 1892 to 1911.**

TEXAS MIDLAND RAILROAD.

For a few years prior to 1891, Green was in Chicago on his mother's business. In 1892, he went to Texas for the purpose of foreclosing a mortgage held by his mother on a piece of railroad then called the Texas Central, of which he took charge, becoming President, Manager and Director. At the time he took over a portion of the road, its name was changed to the Texas Midland Railroad and its headquarters and shops were maintained at Terrell, Texas, the junction of the road with the Texas and Pacific. The road was 54 miles long, in bad repair and with dilapidated equipment. Green devoted his efforts to the task of rehabilitation, converted it into an independent line and gradually extended it to a connection with other railroads until he had more than doubled its length. He rebuilt the road in a substantial manner and introduced many improvements and innovations such as vestibuled coaches, the first electrically lighted trains, electric headlights, the first gas-electric motor cars, dining service and experimented with an air-cooling system. With the exception of the period of Federal control, he retained close supervision of the road up to the time of its sale to the Southern Pacific in 1928. Substantially all of the stock of the railroad was owned by his mother and transferred to the Westminster Company in 1911. After 1911, the active management was left to the subordinate officers who were close friends of Green and weekly reports were made to him by them wherever he happened to be. At the time of the sale in 1928, it was one of the largest cotton carrying roads in Texas for its mileage. The road, however, was never a financial success.

From 1911 through 1921, Green habitually made two trips a year to Texas, visiting Terrell and Dallas in the Spring to attend an annual meeting of the railroad, and again in

October or November to inspect the road, and in alternate years to vote in Terrell at the State and Municipal elections. In some years he made an additional trip. The Spring and Fall visits were at first three or four weeks long and later were reduced to one or two weeks. From 1922 through 1927, he made but one visit a year to Texas, in the first half of the year, and omitted the Fall visit.

[*24] He * visited Dallas and Terrell for two weeks in 1922 and 1923 and thereafter spent only two or three days on each trip to Texas in Terrell and its vicinity, attending the railroad meetings and inspecting the line. On these latter visits, most of his time was spent at Marlin, Texas, receiving medical treatment. In 1922, he was in Marlin for treatment for three months and in the years 1924 to 1927, he was there for a month each year. After 1927, when the agreement to sell the road was made, he never made another visit to Dallas or Terrell and his only visit to Texas was in 1935 for treatment at the Buie Clinic at Marlin.

Domestic Establishments in Texas.

In 1897, Green acquired a private car known as the "Lone Star," which was burned in 1907 and rebuilt as "No. 999." His car was left on a siding at Terrell available for his use at all times until April 1st, 1928. He used it on all of his inspection trips and sometimes lived in it for as much as two weeks at a time. It was elaborately furnished, with dining room, kitchen, office quarters, reception room and state rooms. He travelled extensively in it throughout the Southwest. From 1896 to 1907, he spent more time in his private car than anywhere else.

Green's first living quarters in Texas were in an unpretentious hostelry, called the Harris House. Subsequently, about 1894, he moved into a building then known as the Opera House, where he maintained bachelor quarters in the

"Green Flats," on the second floor of the building, with two of his railroad associates, and had his railroad office in the same building. He also had rooms at the Windsor Hotel in Dallas and about 1896 or 1897, he leased the second and third floors of a building at Elm and Garfield Streets in Dallas, which he remodeled into comfortable living quarters. Later, he purchased a three-story building on Commerce Street in the business quarter of Dallas back of the City Hall, the interior of which he converted and remodeled at considerable expense. He occupied the entire building, which contained twelve or fourteen living rooms, until the building was sold to the Municipality in September, 1911. He also had political headquarters at the Oriental Hotel in Dallas. After the sale of his Commerce Street Building, Green caused one of his friends to rent a room for him in the home of Mrs. Jarvis, 503 Pacific Avenue, Terrell, for
[*25] $5.00 * a month. The rent was paid for three years and then stopped and the room no longer held for him. He sent to the room a box containing a pair of trousers and a vest but was never seen by Mrs. Jarvis in the house. This room was admittedly taken to preserve his right to vote in Texas. He also had a 200-acre experimental farm near Terrell where there were living quarters which he occasionally used. This was afterwards sold and from 1911 on he did not have a vestige of dwelling place in Texas except his private car which was sold with the road in 1927-28. While living in the car and in his bachelor quarters at Terrell, he had two colored boys as servants and at Dallas, he had a modest but comfortable establishment with three servants and Miss Harlow (afterwards Mrs. Green) as his companion and housekeeper. When he removed to New York in 1911, all of the best furniture in the Dallas residence was packed and shipped there for use in his New York dwelling and his library of books on scientific subjects was given to the Dallas Public Library. When he visited in

Texas in subsequent years, he always stopped at the Adolphus Hotel in Dallas or at the Buie Sanitarium in Marlin. Dr. Buie and other friends of his suggested that he purchase a house in Marlin but he never acted upon the suggestion, and at the time of his death his only real property in Texas consisted of some unsalable lots pertaining to the railroad which were appraised at $2200.

Associations and Activities in Texas.

Aside from his railroad activities, Green engaged in farming of an experimental nature upon his farm of 200 acres, became a stockholder and director of the American National Bank of Terrell, of the American Exchange National Bank of Dallas, of the Murray Company and other industrial corporations in Texas, and in conjunction with the United States Department of Agriculture and State authorities he experimented for the control of the boll weevil, which was destroying the cotton crops and seriously affecting the railroad traffic; experimented with cottonseed meal for human consumption; with the use of the round bale for cotton; with the terracing and conservation of land against wind and water erosion; with the use of lignite deposits for fuel and used it in the railroad shops, and prospected to some extent along the line of his railroad and elsewhere for [*26] oil.* He developed thirteen acres of greenhouses and was one of the first rosarians in Texas, and also engaged in the poultry and pecan culture. He brought the first automobile to Texas and developed auto racing; became interested in aeronautics and organized an aviation meet at Dallas; was active in the formation of the Texas State Fair at Dallas; placed an order for the first airplane to be brought to the Fair; was State Commissioner of the World's Fair at St. Louis in 1904 and assisted in the development of the Texas Centennial by the purchase of anniversary coins

and stamps in 1934. He had the first motion picture machine in Terrell and aided in the organization of the Green Cadets and Zouaves, a military company named for him. He subscribed through a bank in Terrell for $5,000,000 of Liberty Bonds during the World War and made a deposit of $250,000 to the order of the First National Bank of Terrell in 1920 although not financially interested in it to save it when a run was anticipated. In 1921, he opened an account for $100,000 in the Security National Bank of Dallas when a run occurred, to save it from failing.

In 1896, he became interested in Texas politics and was elected a delegate from Kaufman County to the Republican National Convention at St. Louis; was made Chairman of the Republican and State Executive Committee at the Fort Worth Convention and served in that capacity for four years and upon re-election, served until 1900; he was the leader of the Green-McDonald faction of the Republican Party and at the Houston Convention in 1906, was nominated for Governor of Texas, but declined upon the insistence of his mother. His faction seated its delegates in the National Convention of 1912, supporting Mr. Taft, and were for Mr. Hughes in 1916 and for General Wood in 1920. Between 1896 and 1900, he controlled the Federal patronage. In 1911 he ardently supported Colquitt for Governor and upon his election, was appointed a Colonel upon the Governor's Staff and served in that capacity until January, 1915. He contributed largely to the National, State and Municipal Campaign Funds, even after he gave up active participation in politics (Tex. Exc. 2).

Footnote 8:

Tex. Exc. No. 2 does not quarrel with the accuracy of the Master's finding, but claims that the Master should have found additional political activity in Texas during later periods.

After Green declined the nomination for Governor of Texas in 1906, upon his mother's insistence, his active participation in politics was curtailed: McDonald, Ev. 461-4, 508-9, 536-8, D. 19, 21, 22. He gave money up to 1920, but not thereafter. (McDonald obviously confused

on dates and contributions, Ev. 510-6, D. 21-2; *cf.* Potter, Ev. 3390-2, D. 139; Marshall, Ev. 5368-79, D. 242.)

On February 10, 1921, Green said that he was "entirely out of touch with the political situation in Texas * * *": Wilks Ex. No. 1, Ev. 560, D. 23.

Voting, Taxation and Social Interests There.

He voted at State and National elections in Texas prior and subsequent to 1911 until 1920 and paid his poll tax entitling him to register and vote until after he was [*27] 60* years of age, although under the laws of Texas he was not obliged to pay a poll tax because of his physical infirmity.

He never went into Texas society or entertained in any of his establishments, and aside from his political associates, black and white, his close friends were few but he remained loyal to them throughout his life and kept in close contact with them by correspondence and gifts of jewelry, etc. He said he liked the wide open spaces of Texas, the freedom from conventionality and the sterling character of the people and always remained loyal to his early associates there. In 1923, he created the "Terrell Trust" for several of his protegées, to whose education and maintenance he had contributed for years, and named his friend, Walter P. Allen, of Terrell, and his sister as Trustees. Vacancies in the Trust were to be filled by two of his old Dallas friends and in 1933, after their death, an amendment was made authorizing some one from Texas to fill vacancies. When seriously ill in 1935, he expressed a desire to be taken to Marlin for treatment, and again, in 1936, he asked Dr. Roche, in Florida, that he be taken to Texas but his medical advisers thought higher altitude would be more beneficial and he went to Lake Placid, where he died.

Uniformity of Declarations Regarding His Legal Residence.

With few exceptions, in substantially all deeds, papers and legal documents he described himself as "of Terrell, Texas" (Fla. Exc. 5),

Footnote 9:

Fla. Exc. No. 5 takes issue with the word "substantially" and points out some exceptions to Green's practice of describing himself as of Terrell, Texas.

Green's instructions to those who prepared papers for him to sign were invariably to describe him as of Terrell, Texas: Marshall, Ev. 5434, D. 246; Bullard, Ev. 7037-9, D. 329; Chinn, Ev. 2792, D. 94; and the few exceptions where this was not done are not of very great significance. Florida cites a few instances, such as automobile license applications, where he was recited as a resident of Florida. There were also some exceptions where he was recited as a resident of Massachusetts: Mass. Ex. No. 367, Ev. 6224, D. 292, and Mass. Ex. No. 369, Ev. 6231, D. 292. See also paragraph 55, Part I of this Appendix.

and instructed Marshall, his secretary, and Potter, his office manager, and his attorneys in New York, Massachusetts and Florida to always insert in important legal documents Terrell as his legal residence. All of his Federal income tax returns were filed in Texas *and the registration of his yacht and numerous boats showed Galveston as the home port* (Fla. Exc. 6).

Footnote 10:

Florida points out in Exception No. 6 that two of Green's boats, the "Friday" and the "Isola Stella," were registered in Florida. There was also another exception to Green's practice of registering his boats as from Galveston, Texas, when he registered the "Mabel G" as from New York: Rodearmel, Ev. 8357.

In his Will executed in 1908, in his application for a marriage license in 1917, in the probate proceedings connected with his mother's estate in 1916-18, and in genealogical articles which he signed or authorized he described himself as of Terrell, Texas. In 1922, he declined to consider running for Congress in Massachusetts because he claimed to be a resident of Texas. In 1929, he stated that he would not be available for appointment as Federal Radio Commissioner from New England because he was a rabid Republican, formerly

National Committeeman from Texas and only spent
[*28] the summer months in * New England. On March
29th, 1935, he testified under oath in Florida, that his
residence was Terrell, Texas, with a Winter home in Florida
and a Summer home in New Bedford, and in January,
1935, he returned to the Texas Centennial Committee a
certificate which described him as of Massachusetts, with the
statement "I have never changed my legal residence from
Terrell, Texas," and in almost all of his declarations, oral or
written, up to the time of his death he insisted that Texas
was his legal residence. If mental state alone, as evidenced
by declarations, could establish domicile, Green remained a
Texan up to the time of his death.

Life and Activities in New York From 1911 to 1921.

Green's mother became ill in 1910 and he went to New
York about July 21st, 1910, accompanied by his secretary,
Walter Marshall, and took quarters at the Waldorf Hotel,
where they lived and he conducted his business. He re-
turned to Texas in November, 1910, and told his mother he
would be ready to come North whenever needed. He in-
formed his railroad associates that it would be necessary
spend more time in the East because of his mother's
vanced age and illness and they would have to manage
e Texas Midland Railroad themselves under his super-
ion. Marshall brought his family to New York and in
ly, 1911, Green caused all of his household belongings
l automobiles to be packed and shipped to New York.
bel Harlow followed him and they moved to 5 West Nine-
h Street, which was owned by the estate of his grand-
ner, Edward Mott Robinson. A few months after his
val in New York, he opened an office at 111 Broadway,
re his secretary Marshall stayed until 1913, when he left
en's service, later returning to him after his mother's
h. Until her death, Green and his mother maintained

joint offices at 7 West Ninetieth Street, where his mother lived and died July 8th, 1916. This building also was owned by the Robinson Estate. After her death, the offices were transferred to 111 Broadway which remained Green's business headquarters until his death in 1936.

Green at that time was possessed of a personal fortune of about $500,000 and after his mother's death, as hereinbefore stated, received in his own right about $4,500,000 [*29] from * the estate of his Grandfather Robinson. On July 10th, 1917, Green and Miss Harlow were married at Highland Park, Illinois, and on October 31, 1917, started on a wedding trip for Galveston, Texas, in the yacht "United States," an old lake steamer which he had purchased October 3rd, 1916, enlarged and refitted. On January 17th, 1918, Green and his wife moved from 5 West Ninetieth Street to the Waldorf Hotel, allowing their furniture to remain in the Ninetieth Street house until it was later shipped to Round Hills, Massachusetts. Upon his return, Green remained in New York until June 30th, 1918, and then went to South Dartmouth, where he and his wife lived on the "United States", Green coming to New York for a few days in the middle of each week. They returned to New York in the Fall and spent the remainder of the Winter of 1918-19 there, leaving for Texas in May, 1919. The "United States" stayed at the wharf at Padanaram, near South Dartmouth, during this Winter and was kept fully manned with a crew of 72 men. With the exception of a few short trips, it remained there until it sank August 21st, 1919. Green and his wife stayed at the Tabitha Inn at Fairhaven, opposite New Bedford, until October, 1919, when he again left for Texas. Upon his return, he stopped at the Waldorf during the Winter of 1919-20 until July 1, 1920; spent the Summer with his wife on his boat "Day Dream" off Fairhaven, coming back to New York in October, 1920, leaving for Texas in November and lived at the Waldorf

with his wife during the Winter of 1920-21 until May, 1921, when he again went to Texas. From 1918 to 1921, Green spent about two-thirds of his time in New York City.

This period from 1911 to 1921 was the most active of Green's business career. He was managing his own fortune, which had increased until at the time of his mother's death it was approximately $6,000,000, handling his sister's business, assisting his mother with her affairs until her death and thereafter acting as Executor and Trustee of her vast estate, directing the family-owned holding companies, besides supervising the affairs of the Texas Midland Railroad. *He became a Director of the Seaboard National Bank July 7th, 1910* (N.Y. Exc. 61),

Footnote 11:

N.Y. Exc. No. 61 refers to a typographical error in this date, which has since been corrected by the Master to read as printed above.

and attended meetings with some regularity until the latter part of 1921. Later, he became a Director by succes-
[*30] sive mergers of the Equitable Trust Company and * the Chase National Bank and was a director of the latter institution at the time of his death. Until 1920, it was his custom to go to his office in the morning, then to the Seaboard Bank, where he had a large chair specially built for him next to that of the President and conducted much of his business, sometimes returning to the office in the afternoon. He also was a Director of the Columbia Trust Company and of the New York Produce Exchange Safe Deposit and Trust Company. Wilbur K. Potter was in full charge of the office, 111 Broadway, his official headquarters and business address, with a complement of bookkeepers and stenographers. Here all accounts were kept, investment information assembled, disbursements made and all records preserved of Green's personal business, his mother's estate and his sister's business and that of the family corporations in which they were interested.

In 1911, the Westminster Company was incorporated u
der the laws of New Jersey to take over the affairs of M
Hetty Green and Green became President. It was an I
vestment Company, of which Mrs. Hetty Green owned 51
of the stock and Green the remainder. It did no busine
for outsiders. After Mrs. Hetty Green's death, its oper
tions decreased and eventually it was liquidated, at the e
piration of the period of ten years from her death. Th
Windham Realization Company was organized under th
laws of New York in 1912 for the purpose of foreclosin
mortgages owned by Hetty Green. Green became its Pres
dent and managed its affairs. While still in existence, it i
practically dormant. It did no business for the public
Green Estate, Incorporated, was created under the laws o
Delaware January 5th, 1927, at the expiration of the ten
year trust established by Hetty Green's Will, to hold intac
the assets of her estate, except non-taxable Government
State and Municipal Bonds and some cash. Green and
his sister each own one-half of the stock. Stockholders'
meetings were held annually and directors' meetings two or
three times a year. The business of the Company was prin-
cipally the collection of interest and dividends and making
distributions to its two stockholders. Green was the final
arbiter of its affairs and determined its investment policy.
It carried very large cash balances and certificates of de-
posit in New York Banks running into millions of dollars.

It controlled no other corporations and did no busi-
[*31] ness * for the public. Green's New York accounts
ran all the way from an overdraft to $1,500,000,
and the average was between $200,000 and $400,000. All
funds for investment were kept in New York City Banks.
Green's personal securities were kept in New York City in
the National Park Bank, the Seaboard National Bank and
in a fireproof, burglary proof safe in the office, 111 Broad-
way. He also had storage space in the vaults of the New
York Produce Exchange Safe Deposit and Storage Com-

pany, of which Green was a Trustee at the time of his death. He also was a Trustee in the Columbia Trust Company from 1912 until he declined re-election in 1920 and attended its meetings with fair regularity until 1919. He attended no meetings of the Trustees of the New York Produce Exchange Safe Deposit and Storage Company after January 9th, 1918. Potter testified that Green spent about four or five hours a week at the office prior to his mother's death, that while the properties managed were extensive and varied, few sales were made and there was little business activity at the office; there were no stock transactions and the principal business was lending money on call, mortgage securities and the investment and reinvestment in tax exempt bonds. (D. 118-157.)

During this period, Green was also a member of numerous clubs, associations and societies in New York but never attended their meetings or visited them.

After his illness in November, 1921, all of his activities in New York ceased; the last bank directors' meeting he attended was October 20th, 1921, and he never went to his office, 111 Broadway, after that date and kept in touch with it by visits from Potter or by correspondence.

Green never entertained socially in New York but occasionally gave theater parties to some of his young protegées. Until 1921, he went to baseball games in the afternoon and to the theater in the evening. After 1921, his evenings were spent in his apartment playing games, listening to the radio and working on his stamp collection. *He had no close personal friends or associates in New York. The confinement resulting from this indoor life bored him and made him unhappy* (Tex. Exc. 49).

Footnote 12:

There are no exceptions to the accuracy of this finding; but in its Exception No. 49, Texas takes exception to the legal significance supposedly given to this finding by the Master.

Massachusetts sees nothing to indicate that the Master's conclusion was unduly influenced by this finding. Also, Massachusetts disagrees with

the Texas Exception to the effect that Green lost interest in Round Hills and was bored and unhappy there. Texas cites no evidence to support this claim, and the Record abounds with evidence to the contrary. See paragraphs 54, 55, 56, Part I of this Appendix.

Places of Abode in New York City.

The two four-story brown stone front buildings, 5 and 7 West Ninetieth Street, owned by the Estate of Ed-
[*32] ward Mott * Robinson, Green's grandfather, were in a residential neighborhood in a transition stage just off Central Park West. Upon his arrival in New York in 1911, Green took up his residence in No. 5 and there maintained a domestic establishment with Miss Harlow. The house was comfortably furnished and he installed a new furnace and had an organ and billiard table. The first floor contained a sitting room and dining room, the second the bedrooms occupied by Green and Miss Harlow and the third contained a billiard room and guest room and the fourth servants' bedrooms and a store room. In the basement were the kitchen, servants' quarters and laundry. They had two Japanese servants and a maid and took their meals there. Each had a Pierce-Arrow car and from 1914 to 1918 Green also had a Benz car, all of which were kept on storage in New York City and there registered. His mother visited him there frequently and they had some other visitors. After their marriage in July, 1917, and upon their return from their honeymoon on the yacht "United States," they spent a couple of weeks at 5 West Ninetieth Street and *during the latter half of 1917, lived on the "United States" anchored off West Eighty-Sixth Street* (N.Y. Exc. 62);

Footnote 13:

Massachusetts concedes that the yacht "United States" was anchored off West 86th Street only while it was in New York, and not during the cruises to Round Hills, Massachusetts, and to Texas. Massachusetts agrees with New York's statement of additional facts in its Exception No. 62, and believes that the Master has in substance found the same facts in other portions of his report (R. 29, 35).

after the holidays they moved to the Waldorf-Astoria Hotel, where they occupied an eight-room apartment, consisting

of a sitting room, office, a room occupied by a clerk working on the stamp collection and four bedrooms. Green's room was a combined bedroom and office containing a desk. Marhall, his secretary, had his office there. The apartment was omfortably furnished; rented on a yearly basis and after he first year, at a daily rate. Meals were furnished by the lotel and billed weekly. While living there, Green worked n his stamp collection until late at night and took a great nterest in radio. Their friend, Mrs. Mary Stafford, became ne of the family circle in May, 1918, and made her home ith them from 1918 to 1927. Miss Ruth Lawrence, one of is protegées, spent a portion of her school vacations there nd he was there visited by friends from Texas and elsehere and by business associates, but did no entertaining. hey remained tenants of the Waldorf until it was demolhed, when they moved to the Sherry-Netherland Hotel, one the best Apartment Hotels in New York City, where they cupied the twenty-fourth floor in the tower. Their suite there consisted of a dining room, which was used as 33] an office for his * secretary, a large living room, entrance hall, bedrooms, servants' rooms and elevator. e living room overlooked Central Park and opened upon errace which was used by Green for sunning. At first he d a lease running for two years from May 1st, 1929, at a tal of $27,000 per annum, which was not renewed, and reafter the rental was continued on a monthly basis, at rate of $27,000, until January 1st, 1933, when a reduc- was made. It was a non-housekeeping apartment and rental included regular guest service from the Hotel. ne of the furniture which they had used at the Waldorf purchased by the Sherry-Netherland for use in this rtment. The apartment contained large safes for his nps and coins, some chairs and lamps and a few framed ures and other personal accessories. In general, the iture and furnishings from the Waldorf suite were ght to the Sherry-Netherland. Several of the former

employees at the Waldorf came to the Sherry-Netherland and *Green said he wanted to preserve the atmosphere of the old Waldorf* (N.Y. Exc. 63).

Footnote 14:

The only criticism of this finding is in New York's Exc. No. 63 that it is "not adequate" and that the Master should have found certain additional facts "in addition to and enlargement upon" the finding.

They had no dining room and Green ate at his desk or on a card table (N.Y. Exc. 64).

Footnote 15:

New York in its Exception No. 64 excepts to this finding on the ground that the Greens had a dining room at the Sherry-Netherlands and used the regular private dining service supplied by the hotel.

Mrs. Berglund testified, Ev. 5771, that there was a dining room at the Sherry-Netherlands apartment, but that it was used by Mr. Marshall as an office; and in answer to the question: "And what did the family eat off of there?" she replied: "In Mr. Green's room, in the big room, where they had all the safes and the desk where he was sitting working at."

He then had two nurses and a maid and Mrs. Green had a maid; also an unlisted private telephone. He was there visited by many of his friends from Texas and elsewhere and business associates and sometimes entertained them at meals.

His furniture, pictures and furnishings remained in the house, 5 West Ninetieth Street, until 1921, when most of them were moved to Round Hills, Massachusetts. In 1928, the remainder was sent there and the house demolished.

Between 1918 and 1932, he had a number of automobiles for himself and his wife which were registered in New York City and when not in use kept on storage.

In the last three years of his life Green avoided New York because of efforts to serve him in certain litigation against the Directors of the Chase Bank (N.Y. Exc. 51).

Footnote 16:

N.Y. Exc. No. 51 does not challenge the accuracy of this finding, but seeks to make additions as follows: "in the last three years of his life, Green, on the advice of his personal general counsel in New York City, avoided New York because of efforts to serve him in certain litigation against the Directors of the Chase National Bank." Massachusetts has no objection to such additions.

During the last ten years of his life, this apartment in New York was used as a temporary sojourning place on his trips North and South (N.Y. Exc. 65)

Footnote 17:

This finding is challenged by New York but is amply supported by the Evidence. As to time spent, see Tables A and B with their supporting references to Evidence, attached to Massachusetts Requests to Find. As to attitude towards New York apartment, see paragraphs 6 and 7, *supra*, Part I of this Appendix, and the references to the Evidence there given.

nd at the time of his death, contained over 100 of his nother's letters, *a portion of his stamp collection* (N.Y. Exc. 8), *his interest in which had been slight since 1927* (N.Y. xc. 49),

Footnotes 18 and 19:

In N.Y. Exc. No. 48 it is pointed out that more than 80% of Green's total stamp collection was kept at his apartment in the Sherry-Netherlands Hotel in New York City. This is correct; but, as the Master has found, the portion of the stamp collection kept at the Sherry-Netherlands was the portion in which Green's interest had been slight since 1927. In N.Y. Exc. No. 49 an exception is taken to the finding that Green's interest in his stamp collection had been slight since 1927, and it is claimed that stamp collecting was Green's principal hobby and that he always maintained his interest in it. The Evidence clearly shows that Green lost his interest in stamp collecting in 1927, and did not take it up again until about 1934 or 1935, when he began to make a collection of 20th century stamps: Potter, Ev. 3581, D. 157; Jette, Ev. 6617, D. 308-9; Mass. Ex. 342, Ev. 5324; Marshall, Ev. 5387-9, D. 243.

ne clothing of Mrs. Green and a few personal belongings worth less than $1000.

34] * The tangible personal property owned by Green in New York State at the time of his death was as lows':

Jewels	$482,545.25
Coins	1,338.57
Cash	3,040.00
Stamps	1,095,316.00
Miscellaneous personalty	982.00
Total	$1,583,221.82

0. 75, 76.)

Voting and Taxation There.

Green never registered or tried to vote in New York. In 1916, his name was put upon the Assessment Rolls of New York City and his property appraised at $10,000,000, but upon application of his attorneys and affidavits by Green that he was not and never had been a resident of New York and that his legal residence was in Texas, this assessment was cancelled and no further attempt made to collect a tax on his intangible personal property. After 1919, when New York substituted an income tax for this intangible property tax with a graduated rate applying to the entire net income of a resident, Green never made any income tax return or paid any such tax in New York. (D. 126, 127.)

In 1917, while cruising in New York waters, when Mrs. Green and Mrs. Stafford suggested that he build a home on Long Island he said that he did not want to, as he did not want to pay taxes in New York; later he told them he wanted to build on his mother's place at Round Hills. (D. 207.)

There is nothing in the correspondence between Green and his attorney, Charles W. Pierson, of New York City, indicating that he ever regarded himself as a resident of New York (N.Y. Exc. 66).

Footnote 20:

Massachusetts acquiesces in N.Y. Exc. No. 66 to the extent that it is claimed that this is a negative finding.

When he was advised by his said attorney that he had been assessed $5,000 for personal property in New York City for 1933, and Mrs. Green assessed a like amount, as non-residents, he replied that all he had in New York City was a stamp collection and safes, to him worth more than $5,000; all Mrs. Green had was a radio set and perhaps some cast off clothing (Mass. Ex. No. 330; D. 228).

[*35] * **Massachusetts and Florida, 1921 to 1936.**

ROUND HILLS ESTATE, SOUTH DARTMOUTH, MASSACHUSETTS.

The third and closing period of Green's life—the fifteen years preceding his death—shows not only a lessening of business activity, a desire to escape from the uncongenial environment of New York, and withdrawal from his former associations with Texas, but that his principal concern was his health and he was constantly seeking relief from the ravages of disease by "following the sun" and indulging in hobbies and outdoor activities where the climate permitted (Tex. Exc. 3).

Footnote 21:

The progressively diminishing visits to Texas over the period from 1911 to his last visit in 1935 are undisputed. See Report, pp. 24, 51, relative to visits to Texas, to which no exceptions have been taken. After 1921 the little time he spent in Texas was chiefly at the Buie Clinic at Marlin, R. 24, 51. After 1927 he went to Texas only once, in 1935. The claim of Texas that Green was kept away from Texas by his ill health is hardly consistent with the fact that during the last fifteen years of his life Green's health was the chief reason for his going to Texas. It was to Round Hills, Massachusetts, that Green kept coming back and staying late in the year in spite of the doctors' advice. See paragraphs 35 and 55, Part I of this Appendix.

Professor Bowles, of Massachusetts Institute of Technology, testimony: "Prior to the 1932 illness, Green said the doctors told him to get away from Round Hills if he wanted to live; that the weather here in New England was not right for him, and Green said that he was going to go to Round Hills and continue to go to Round Hills, and if he was going to die there he was going to die there and that was that, because he wanted to be there." Ev. 6846-7, D. 324.

After his mother's death in 1916 and his marriage in 917, he was free to establish a permanent home in any ocality that he considered suitable, because he then had no ttachment to the soil anywhere and was free from restraint. n the month following his marriage, he and Mrs. Green ailed to Buzzards Bay and anchored off Round Hills Farm, property which Green and his sister had inherited from eir mother. As a boy he had spent two Summers there ith his mother and sister. It was a seacoast property of pproximately 130 acres, located at South Dartmouth, Mas-

sachusetts, about eight miles from New Bedford, which had been in the ownership of his Howland ancestors for over 200 years—from the time of the original Indian grants—and was regarded by Green as an ancestral estate. The only structures then on the property were the old Howland homestead and some outbuildings. *On this first visit in August 1917, he determined to develop the property into a great country estate and build there a monumental home* (Tex. Exc. 52; Fla. Exc. 7).

Footnote 22:

This finding is amply supported by the evidence.
See paragraphs 8, 9, 10, Part I of this Appendix.

On several other visits that Fall he ordered the clearing of the land, construction of breakwaters, wharfs, water tanks, pumping plant, greenhouses, gardeners' cottages, surveys to be made of adjoining property and had conferences with architects and interior decorators. *From 1918 to 1921, the development of this property was his principal occupation* (N.Y. Exc. 68; Fla. Exc. 8)

Footnote 23:

This finding is amply supported by the evidence.

See paragraph 11, Part I of this Appendix, and unexcepted finding on page 52 of Master's Report that "During the interval between 1917 and 1921, he spent much of his time at South Dartmouth superintending the building operations."

and in June, 1919, the foundation of the house was started by Mrs. Green turning the first spadeful of earth. He lived on his yacht "United States" until she sank in August, 1919, and later at the Inn at Fairhaven, and in 1920 on the house boat "Day Dream", watching the progress of the work. In July, 1921, the house was ready for occupancy and Green and his wife moved in.

[*36] * Green stated that his sister was willing to have him do what he pleased with the property and as they were childless, *if he survived he would have the entire*

ownership and if she survived she would own it as residuary devisee under his Will executed in 1908 (N.Y. Exc. 69).

Footnote 24:

This finding is amply supported by the evidence. See paragraph 12, Part I of this Appendix.

Mrs. Green had relinquished her rights by an antenuptial agreement, under which she received a guaranteed income of $18,000 a year. As Green and his sister were the last of their line, Green had a plan, which was never matured, to have the house become a memorial of some kind to the Green and Howland families. The house was designed and constructed so that it might be converted into an institution but was designated on the plans, equipped and furnished as a spacious residence, with every household convenience, and was used as such from the time he moved into it until his death.

The Round Hills property which passed under Mrs. Hetty Green's Will was a triangular tract with sandy shores jutting into Buzzards Bay. It was mostly wooded and uncultivated farm land on which was the old Howland homestead, some outbuildings and a small family graveyard containing two members of the Howland family. Between 1918 and 1920, Green purchased about 140 additional acres and later purchased two more parcels. In 1925, he conveyed about four acres to Whaling Enshrined, Inc., a corporation which he organized, but with this exception *retained the whole estate of about 270 acres up to the time of his death* (N.Y. Exc. 70; Fla. Exc. 9).

Footnote 25:

Massachusetts agrees with the New York and Florida exceptions that about 130 acres of Round Hills was inherited by Green and his sister from Hetty Green, and was owned by them as tenants in common, and that the big house was built on this portion of the estate. This property, inherited by Green and his sister, had been in their family continuously since the seventeenth century (R. [illegible]).

The estate comprised a bathing beach, a piece of woodland, some farm land, an extensive lawn with shrubbery,

etc. He also acquired some wharf property about a mile distant at Padanaram as a headquarters for his boats and built a machine shop, floating dock, etc. Between 1917 and 1921, in addition to the house, Green constructed half a dozen cottages and had a "hotel" for employees, numerous farm buildings, garages, greenhouses, bath houses, pier and water tank and built jetties and retaining walls to prevent erosion and planted thousands of roses. Later, when he extended his activities, he built swimming pools, tennis courts, radio broadcasting stations with towers, airport and hangar, an airship dock, brought an old windmill from Rhode Island and embedded in cement a complete whaling ship, the "Charles W. Morgan" which had been sailed by his whaling ancestors, and began to accumulate whaling antiquities. At the time of his death, there were about 60 buildings on the property.

[*37] * The house was a three-story rectangular structure of granite, with tile roof and Doric portico, with four columns surmounted by a heavy pediment, facing the waters of Buzzards Bay. Along the waterfront was a wide tiled terrace extending around the south wing and terminating in an open loggia overlooking the south beach, the front of which was of glazed tile to permit dancing. Under the portico, the main entrance led into a central hall containing a double mahogany staircase and an electric elevator running from the basement to the third floor. To the right of the entrance were Green's study, the library and a hall leading to the living room which occupied the entire south wing and was about sixty by thirty feet. To the left of the entrance, was the estate office and beyond the dining room, approximately forty by thirty feet—beyond this was the breakfast porch, a butler's pantry, the main kitchen and service quarters. On the second floor, Green and his wife had bedrooms, each measuring approximately thirty by twenty feet, with baths and dressing rooms, occupying the

entire south wing. Opening off the hallway were a number of guest rooms, each having its own fireplace and bath. On this floor there was also a tea room, fitted with furnishings from the "United States" and the apartment of Green's secretary. The service quarters occupied the third floor. The basement contained an automatic oil heating system installed in 1935, valet's pressing room and a specially constructed vault for the storage of valuables.

The house was not only institutional in appearance but massively built, with walls sixteen inches thick of granite and masonry, interior columns and supporting beams of reinforced concrete and partitions of brick or terra cotta. The roof beams were supported by steel frames resting on the masonry walls and there were an unusual number of outlets for electric lights, etc. The furnishings were elaborate and most of the furniture specially built. Some of the pictures, clocks, etc., had been moved from 5 West Ninetieth Street, New York, and had formerly been in his Dallas homes. A portion of the first floor had mahogany wainscoting and many of the rooms were provided with revolving fans such as Green had seen in Texas, so arranged that they could be used to circulate the heat from the radiators in cold weather.

At this house, Green assembled all of his family possessions and heirlooms, two oil portraits of his mother
38] and * another of his grandfather, Edward Mott Robinson, fine prints and engravings of whaling ships and scenes, photographs of the "Charles W. Morgan," framed certificates of his membership in various historical societies, photographs of the New Bedford house in which his mother was born and of the Captains of the New Bedford "Stone Fleet," and of Green as a Colonel on Governor Quitt's Staff and mementoes of other incidents in his career.

The library contained a well chosen collection of miscellaneous and scientific books and of many rare volumes on the early history of New England and of the Elizabeth Islands, opposite South Dartmouth, log books and other mementoes connected with the whaling industry, and a machine used for stamping medallions with the names of visitors to the "Morgan". In his bedroom were pictures of his mother and of the old Howland homestead, and scientific instruments and paraphernalia connected with the stamp and coin collections. *In the vault in the basement, was kept* his liquor and the *bulk of his collections of* jewelry, numismatics and *stamps,* which he took with him on trips to Florida and Texas and shipped back to Round Hills (N.Y. Exc. 48).

Footnote 26:

The finding is clearly correct that the bulk of the collections was at Round Hills, and the exception relates to the single item of stamps alone. As to the stamps kept at the Sherry–Netherlands and at Round Hills respectively, see Footnotes 18-19, *supra.*

At one time he had a number of small boats, called his "Navy" or "Mosquito Fleet," but sold most of them after the sinking of the "United States" in 1919. The grounds were filled with mementoes of the sea. The driveways were bordered with hundreds of yards of anchor chain from the Charlestown Navy Yard and upon the lawn was planted a part of the hull and mast of the whaling ship "Wanderer" which had been wrecked upon the Island of Cuttyhunk nearby.

The household at Round Hills included Mrs. Green, Marshall, his secretary, his bookkeeper and the clerk in charge of his numismatic collection, Mrs. Green's personal maid, Green's nurses and a staff of about 30 servants. Outside of the household servants, he had employed about the place over 50 farmers, mechanics and other employees. *Mrs. Stafford, who had made her home with them in New York,*

lived at Round Hills each year from 1920 to 1927 (N.Y. Exc. 50)

Footnote 27:

In 1920 Mrs. Stafford was acting in the Winter Garden Theatre in New York City and lived principally at the Greens' apartment in the Waldorf, only visiting them in Massachusetts: Ev. 4970-71, D. 208.

During 1921-1927 Mrs. Stafford was no longer in the theater, and she lived with the Greens wherever they were: (1921) Ev. 4977, D. 208; (1922) Ev. 4981-2, D. 208; (1923-7) Ev. 4990, D. 209.

and several of his protegées spent their Summer vacations there. Most of the outside employees remained there all the year round *but after the Winter of 1921-22, a skeleton staff of seven or eight servants was left in the house in the Winter and the remainder went back and forth between* [*39] *Round Hills and* * *Florida* (N.Y. Exc. 53).

Footnote 28:

Massachusetts acquiesces in this Exception (except that seven or eight servants, not a few, were left at Round Hills when Green was away), and points out that the "summer season" at Round Hills therein referred to extended into the middle of December. See paragraph 21, Part I of this Appendix, for detailed movement of servants.

The house was kept heated throughout the Winter, but the furnishings were covered and protected (N.Y. Exc. 54).

Footnote 29:

New York does not except to the accuracy of this finding, but suggests further additional details which should be found.

Massachusetts does not object to these additional details except that it gives a false impression to say that the house "was closed." There were always at least seven or eight servants living there (paragraph 21, Part I of this Appendix).

Most of his automobiles with Massachusetts registrations were kept there and when they began moving to Florida, the cars for Colonel and Mrs. Green were taken back and forth and many of them were provided with Florida license plates.

Activities, Interests and Associations at Round Hills.

Because of the arthritic condition which developed in 1921, Green used a small electric hand operated car by which he

propelled himself around the grounds and later bought a small closed electric car with heating equipment which could be used in cold weather. This car was fitted with appliances for his collections, books and papers and enabled him to be outdoors in all kinds of weather, to give attention to the various activities there.

At Round Hills, Green did not go into society and was indifferent to the Summer residents of Nonquitt and Salters Point, especially after they objected to his radio and aviation field. *His guests were limited to some old residents of New Bedford, visitors from Texas and his wards* (Tex. Exc. 5).

Footnote 30:

Massachusetts believes that the finding is amply supported by the evidence.

See paragraph 33, Part I of this Appendix.

He enjoyed hobnobbing with farm employees and the local tradesmen of New Bedford and the men engaged in scientific research. He was very popular with the people of the vicinity and kept his grounds open to the public who came by thousands to bathe on his beach and see the whaling ship "Morgan." He made his grounds and boats available for the use of crippled children and supplied all year round bus transportation for girls attending public schools. His daily routine was to have breakfast in his room or with his wards, motor around the estate inspecting the improvements, go shopping in New Bedford, have lunch and dinner with the family and afterwards spend the evening showing moving pictures, playing the slot machines and working until late at night over his stamp and numismatic collections. During the first year he was at South Dartmouth and vicinity he made weekly trips to New York until they were discontinued after 1922. He gave some attention to farming and horticulture as in Texas, had a dairy, raised goats, poultry, etc., and employed about 40 farm hands, half of whom stayed

all the year round. His farm supplied the house with vegetables and his greenhouse furnished flowers, but were not profitable.

[*40] * He maintained an unusual photographic laboratory and made moving pictures of his activities there. In 1922, he became interested in radio, constructed two broadcasting stations and enlarged them in 1925 so that programs could be sent from his station WMAF, called "The Voice from Way Down East," throughout New England and even to Europe, issued a pamphlet describing this station in which he spoke of himself as a descendant of the John Howland to whom the Round Hills tract had been allotted. At his invitation, thousands of people came to hear his concerts and other broadcasts. At the end of 1925, when broadcasting became commonplace, he lost his interest in this phase of radio and devoted his attention to it as a means of communication, etc.

In 1927, his interest became centered in aviation and the use of radio in connection with navigation by air and sea. He placed a number of his buildings and his radio facilities at the disposal of the Massachusetts Institute of Technology, for experimental purposes, in connection with radio communication between the ground and air, direction finding, transmission of radio beams for the guidance of aviators, and in connection with this project he began the same year the construction of a fully equipped airport, with facilities for landing hydroplanes as well as airplanes, obtained licenses to dredge and fill in sections of the waterfront, and constructed a hangar and runway for airplanes. In connection with the Massachusetts Institute of Technology, he arranged with the Goodyear Tire & Rubber Company to supply a blimp for research work and built a blimp dock. This airport was rated A-1 by the United States Government and no landing charge was made. He employed a superintendent and established a school for aviators. In 1929, purchased a

flying boat for his wife called the "Miami Maid" which he kept at Round Hills. He studied the subject and could discuss aeronautics intelligently with mechanics upon his daily visits to the airport which was maintained in good condition until his death.

The Round Hills Research Division of the Massachusetts Institute of Technology started in 1925 and continued until his death. It began with a study of radio as aid to navigation and studies were made of the penetration and dissipation of fog as an aid to air navigation. In 1931, experiments were begun with high voltage generators for the "smashing" of atoms, etc. Green took a personal interest in these experiments and it was his custom to make daily
[*41] visits to the work * shop and laboratory. In the relief work during the Vermont flood in November, 1927, and in connection with the sinking of the "Vestris" November, 1928, and signalling to the Graf Zeppelin on her maiden voyage, as well as during the Byrd Antarctic Expedition of 1926-7, this station demonstrated its practical usefulness. Some part of this experimental work was carried on in collaboration with the United States Government. These various facilities cost Green upwards of $1,250,000 between 1925 and 1933, in addition to the money gifts made to the Institute of Technology. Pecuniary donations were discontinued after 1933 but he continued to supply the facilities.

Early in his development of Round Hills, Green began to assemble books, antiquities, etc., connected with the whaling industry in which his forebears had prominently engaged. In 1924 he tried to purchase the "Charles W. Morgan", an old whaling ship which had belonged to his ancestors at one time and finally arranged to have it transferred to Whaling Enshrined, Inc., to which corporation he transferred a part of his shoreland for a concrete berth and dock. Until his death he donated $10,000 to the maintenance of the ship and

her crew of a Captain and nine sailors. He collected flags which had been used as signals by the New Bedford Fleet and on anniversaries had them displayed. This ship was kept open to the public without charge and about 125,000 people visited it yearly. In connection with the "Morgan", it was originally his intention to construct a whaling village and museum but this project, while started, was never completed.

Many volumes in his library relating to whaling and marine industry and Gosnold's Voyage to New England in 1602 were of great rarity. Green had expert advice and gave much personal attention to the collection of these books and histories relating to the genealogy of the Howlands and the early history of New England, New Bedford and South Dartmouth. In his application for membership in the Massachusetts Society of the Sons of the Revolution and the Society of Colonial Wars, he claimed lineal descent from Massachusetts and Rhode Island ancestors. He also had a tablet in memory of his mother placed in the room of the Massachusetts Historical Genealogical Society.

All of these activities ceased in the last three years of his life but he continued to spend substantially all of his Summers *at Round Hills until his death and all of his* [21] *personal* and intimate belongings remained there* (N.Y. Exc. 55).

Footnote 31:

Massachusetts submits that this finding is amply supported by the evidence. See recital of some of the personal and intimate belongings which were at Round Hills, at paragraph 23, Part I of this Appendix.

The portion of the stamp collection which was left at the Sherry-Netherlands was the portion in which Green's interest had been slight since 1927. See footnotes 18-19, *supra*. The evidence does not support New York's claim that "all of the letters written to Green by his mother" were kept in New York City, but Massachusetts concedes that some of the letters from his mother were left in New York City, as is found by the Master, Report, p. 33.

old Neyland that he hoped to be there when he died 14). *His remains were brought there from Lake Placid*

for the funeral service and Mrs. Green continued to occupy Round Hills for six months after his death (Fla. Exc. 10).

Footnote 32:

Florida's Exception does not dispute the accuracy of this finding, but merely raises the question of its evidentiary value.

The cost of the Round Hills house and its furnishings was approximately $785,323.42; of the Round Hills farm, $616,-127.44 (Mass. Ex. No. 411; D. 267-8). *Between 1917 and 1936, Green expended on the Round Hills estate on both capital account and maintenance $6,688,639.55* (D. 268) (Fla. Exc. 11).

Footnote 33:

Florida excepts "because the Master failed to further find and inform the Court that the said amount included large sums of money spent on radio, aviation, Whaling Enshrined, and other activities not connected with Round Hills as a place of residence." The details of these expenditures are given in the Digest, pp. 265-8. Massachusetts concedes that all of these expenditures were not for the dwelling house proper, but they were all for Round Hills and very clearly they were for matters which were of great interest to Green and which helped to make Round Hills an absorbing, interesting home to him.

His assets in Massachusetts at the time of his death were:

Real estate at Round Hills (one-half interest in same)	$103,000.00
Real estate at Padanaram	25,000.00
Jewelry	864,119.00
Coins, medals and tokens (face value $126,-409.13)	376,799.64
Paper money (face value $608,013.42)	626,496.18
Gold certificates	33,370.00
Paper money	198,256.00
Stamps	203,132.00
Tangible personalty at Round Hills	63,823.60
Tangible personalty at Padanaram	4,711.00
Total	$2,498,707.42

(D. 75, 76, 77-79.)

Voting and Taxation in Massachusetts.

He never attempted to vote in Massachusetts, declined to register there or to run for Congress, and never openly acknowledged Round Hills as his legal residence, invariably giving as his reason that he wished to avoid paying taxes there (Fla. Exc. 12; N.Y. Exc. 57).

Footnote 34:

Both New York and Florida object to the above finding of the Master on the ground that Green went further and always denied that he was a resident of Round Hills.

Green, in several instances, did claim residence at Round Hills. See Mass. Exs. 367, 369, D. 292, and other instances cited under paragraph 55, Part I of this Appendix.

Green frequently stated that he never stayed in Massachusetts longer than six months in order to avoid paying taxes there. See paragraph 49, Part I of this Appendix.

n 1919, he had his yacht "United States" taken out of the tate to avoid taxes (N.Y. Exc. 56; Tex. Exc. 7).

Footnote 35:

The Exceptions of New York and Texas pointed out a typographical error in the date, which has since been corrected by the Master, to read as printed above. Massachusetts understands that the Exceptions do not otherwise challenge the accuracy of the finding, but the Exceptions do make certain other points in respect to the evidentiary value of the finding and in respect to where Green had his residence at the time.

or the same reason he carefully refrained from going into e State until after July 1st and always arranged to leave fore the expiration of six months. When notified by the ssachusetts Commissioner of Corporations and Taxan in 1928 of his liability to income taxes as a resident of ssachusetts, Green said that he had his legal residence at rrell, Texas, and was not at that time prepared to file or pay income taxes to Massachusetts as a resident. At
3] no time did he file an in-*come tax return or pay any income taxes to Massachusetts and after this erview, no demand was made upon him until the formal ice which was received shortly after his death. (D. 88-9, -231, 338-340.)

Physical Condition After 1921.

Although Green recovered from the acute illness of 1921 and his general health and the condition of his organs remained good, a gradual physical deterioration set in which resulted in extreme anemia requiring many blood transfusions, and removal of his teeth and a severe arthritic condition which was aggravated by the fog and dampness at Round Hills. He was frequently advised by his physicians that he should not remain there so late in the year but always insisted on staying into December except on four occasions in the last fourteen years of his life. During this period he never used alcohol but was addicted to the excessive use of bromo-seltzer which greatly weakened him. In September, 1932, a cardiac condition required him to seek a higher altitude and he went to Lake Placid, New York. From then on his decline was progressive. He was unable to go about alone and was driven by chauffeurs. He continued his shopping trips to New Bedford and spent much time outdoors on his estate accompanied by some of his protegées. *He was confined to the house more frequently and his activities were greatly curtailed or discontinued, although his interest survived* (Fla. Exc. 13).

Footnote 36:

Florida excepts "because the Master failed to find that as his activities in Massachusetts were curtailed or discontinued and his interest declined, his activities and interests in Florida increased and continued."

Massachusetts believes that this claim by Florida is clearly refuted by the evidence. Green's activities necessarily decreased everywhere after his heart attack in 1932, but as found by the Master, his interest in Round Hills and the activities there survived. See paragraph 36, Part I of this Appendix, and Massachusetts Brief in this Court, dealing with the activities in Florida.

46 Star Island, Miami Beach, Florida.

In 1923, Green was advised by his physician, Dr. Pascal, to go to Florida following an operation and blood transfusion in New York. He stopped in hotels in Miami and Jacksonville, purchased the house boat "Pioneer," upon

which he cruised; ordered a house boat to be constructed early in January, 1924; returned to Jacksonville and spent nearly two months at hotels or on the "Pioneer." When the boat which he called the "Colonel" was finally delivered, both boats were taken to Miami. In April, 1924, Green purchased a lot on Star Island, Miami Beach, at a cost of $32,000 and ordered some landscaping and the construction of a dock. In January, 1925, he returned to Miami Beach and lived on the "Colonel" at the Star Island dock for about three and one-half months. While there, Green pur-
[*44] chased * *two adjacent lots for $120,000, one of which contained a Yacht Club which he remodeled into a dwelling for the following season* (Fla. Exc. 14).

Footnote 37:

Florida excepts to the word "remodeled" and states that the Yacht Club was razed and a new dwelling erected. Massachusetts does not object to this statement of the facts. The nature of the changes is specifically described by the Master at the bottom of page 44, his Report.

The second part of Florida's Exception deals with the ultimate fact of whether Star Island was a home. This of course depends upon the preponderance of the whole evidence and reference is made to Massachusetts' Brief.

When he arrived in January, 1926, he had most of this work done over. That year he spent February, March and April on his house boat "Colonel" at the Star Island dock. The house was finally completed and they occupied it for the first time in 1927, remaining for nearly three months, then going to Marlin, Texas, in April. *During the succeeding years until his death, Green's average stay in Florida was about four and one-half months, between January and May* (Fla. Exc. 15).

Footnote 38:

The Florida Exception does not challenge the accuracy of this finding, but complains that additional findings should be made in respect to the time spent at Florida during different periods. As to these further findings suggested by Florida, we would like to point out that the small increase of time spent at Florida in the later years was at the expense of time which Green had formerly spent at New York, and was not at the expense of time formerly spent at Round Hills. Further, the small increase was due principally to the fact that in the last three years

of his life he stayed out of New York City entirely, due to threat of being made defendant in a lawsuit: Report, p. 33; footnote 16, *supra*.

The statement by Florida that after 1928 Green spent more time in Florida than he did in Round Hills is accurate only because of the fact that the period taken is 8½ years and Green died before going to Round Hills in 1936, so there were 9 years of living in Florida to compare with 8 for Round Hills. If the time spent by Green for the last 8 years, from June 8, 1928, to June 8, 1936, is taken it will be found that during this period of 8 years for each place he spent more time in Massachusetts than in Florida. See Table B and references to evidence annexed to Massachusetts Requests to Find.

Star Island House.

Star Island is an artificial island built by the Miami Ocean View Company by pumping earth from the bottom of Biscayne Bay opposite and within the city limits of Miami, and connected by a bridge near one of the principal Causeways leading to that City. It is elliptical in shape, with a circular driveway in the center leading into the principal estates and contains 46 lots. Green's estate comprised three of these lots containing approximately three acres. The entire area is restricted to residential and the houses are substantial and beautiful.

Green's residence embraces two houses of a low Spanish type, built of reinforced hollow tile and stucco. The main building faces the water and was separated from it by lawn about twenty yards wide covered with palms and exotic shrubbery. From the loggia in the center portion of the building there was a runway to the main dock, which was decorated with striped poles in imitation of Venetian gondolas. On the inland side were the service quarters, driveway and formal gardens filled with royal and cocoanut palms, etc.

When the work of construction was completed, nothing remained of the Yacht Club but the central living room, which was two stories in height with a bronze staircase leading to the second floor at one end and a fireplace with a balcony or mezzanine above. The ceiling of this room was ornate and beautiful. On both the waterfront and driveway

sides were loggias. West of the living room were the dining room, service quarters and double garages. On the east side was a large reception room used for displaying moving pictures, and patio and loggia, a sun room called the "Palm Room" and entrance hall in which was an electric [*45] elevator * to the second floor, where the Greens had their bedrooms, sitting rooms and baths. An enclosed passageway and corridor led to the guest suites, three of which were on the inland side and the other faced the waterfront. Each master bedroom had its own bath or shower and some of the suites contained sitting rooms. The windows and doors were placed to admit light and air. The servants' wing was unusually complete and accommodated about 25 servants. All of the main rooms contained numerous electric outlets. Green had his monogram, composed of two Gs interwoven, worked in the tile at the main entrance and in the front of both entrances; also his initial G on the panels of the elevator shaft. The house was constructed of the best materials and designed for comfort and beauty. There was nothing about it to suggest anything but an unusually fine private residence. It was furnished elaborately with specially built furniture manufactured by the Company that had made the Round Hills furniture and by decorators in New York City. The decorations were somewhat similar in style to Round Hills but lighter in color. The rugs were more beautiful and expensive than those at Round Hills and the general effect was more homelike. Adjacent to the room used for moving pictures, was a projector room and a room containing a large number of films, some of which were commercial but many made especially for Green showing scenes on Star Island and Round Hills. Green's bedroom contained some furniture specially designed for his use and much paraphernalia used in connection with his stamp and numismatic collections. *The house contained no library, no framed pictures or mementoes of his ancestors, or articles of a senti-*

mental nature or personal associations as at Round Hills (N.Y. Exc. 73; Fla. Exc. 17).

Footnote 39:

Massachusetts submits that the finding is clearly supported by the evidence, and that the articles mentioned in the Florida and New York Exceptions are inconsequential. Compare them with the articles at Round Hills: Report, pp. 37-8, and paragraph 23, Part I of this Appendix.

Green sold the "Pioneer" in August, 1925, and after the completion of his house, had the "Colonel" remodeled to look like a Mississippi River show boat and kept it moored at his dock for use as a dance pavilion at Mrs. Green's parties. This boat was sold in 1934. He also had three other boats in Florida—a tug boat called the "Friday", a speed boat, "Mabel G." and the "Isola Stella" (Italian for Star Island). Green himself never used any of these boats after 1929 and in the last few years they were kept tied up at the dock or in storage.

Green also had several automobiles for himself and Mrs. Green containing Florida or Massachusetts license [*46] plates,* *which were brought from Round Hills to Star Island and sent back at the end of the season* (Fla. Exc. 18).

Footnote 40:

Florida makes the exception that some of the cars were purchased in Florida and were therefore brought from Florida to Round Hills, and not from Round Hills to Florida. Massachusetts has no objection.

The grounds at Star Island were planted and cared for by the Exotic Gardens, Inc., which performed similar service for neighboring estates. Green took an interest in his grounds and flowers and it was regarded as one of the handsomest places in Miami.

Most of the remodeling of the building was done in his absence and when there he did not display the same interest in the construction as at Round Hills and seemed to rely more upon his architects, decorators and contractors.

The capital cost of the Star Island residence was $632,110.98 and the total expense account $842,324.66 (D. 151-

153). At the time of his death, his assets in the State of Florida aggregated $268,418.97, as follows:

Fractional currency	$4,039.70
Four boats	10,500.00
Furniture, etc.	45,237.00
Real estate	102,500.00
Property subject to agreement for deed	60,000.00
Mortgages	46,142.17
Total	$268,418.97

(Tex. Ex. 327; Ev. 2586-7; D. 75-76, 79.)

Household Establishment and Social Activities in Florida.

When the Greens were at Star Island, the household included Mrs. Green, Marshall, his secretary, and a staff of over 25 servants, some of whom were brought from Round Hills for the season and sent back. When not in use, the house was left in charge of a Miami couple as caretakers and the Chief of Police notified. Mrs. Stafford lived with the Greens for several seasons on their house boat and they had few other house guests except old friends from Texas. Green himself did not go into society or entertain but Mrs. Green did considerable entertaining, giving on one occasion a housewarming party for 300 guests, when the illumination of the gardens and floral display were elaborate. Although a member of various Miami Clubs, Green did not go there. He was very popular with townspeople and tradespeople but aside from a few acquaintances in the City of Miami who were prominent in local affairs, he had * no close friends there. *He never conducted in Florida any of the activities or experiments which occupied him in Texas and Massachusetts* (N.Y. Exc. 74),

*47]

Footnote 41:

Massachusetts submits that this finding is amply supported by the evidence. It is not excepted to by either Florida or Texas; and the

citations to the evidence supporting New York's Exception, when compared to the activities at Round Hills, are proof of the accuracy of the finding. Compare paragraphs 26 to 48, Part I of this Appendix.

and although facetiously calling himself a "cracker," he did not appear to be particularly interested in the history of Florida or in the accumulation of books or mementoes relating to its early history.

Aside from his financial interest in the Fogal Dry Dock and Storage Company, where he kept his boats, and a stock interest in some of the local banks, his life in Florida was typical of an invalid seeking health (Fla. Exc. 20)—

Footnote 42:

This is an ultimate fact which can be established only by a preponderance of all the evidence, and Massachusetts submits that there was ample evidence on which the Master based the finding, after having heard the witnesses and having seen Round Hills and Star Island.

cruising in the waters of Biscayne Bay and Indian River when physically able to go in his boats; taking daily drives in his automobile with a chauffeur; shopping expeditions in the adjacent cities of Miami and Miami Beach; making purchases of diamonds and jewelry, and when confined indoors, working on his coins, currency and latest stamp collections, displaying moving pictures and making jigsaw puzzles (of both of which 46 Star Island contained hundreds of examples), occasionally receiving callers, participating in the water carnivals and stimulating outdoor motor racing by giving trophies. He contributed to one of the Churches but attended none and also made donations to various charitable objects and made moderate contributions to many local institutions. *Everything he did indicated a seasonal vacation and relaxation from physical and mental effort* (Fla. Exc. 19).

Footnote 43:

This is an ultimate fact which can be established only by a preponderance of all the evidence, and Massachusetts submits that there was ample evidence on which the Master based the finding, after having heard the witnesses and having seen Round Hills and Star Island.

He realized that the "sun was on his back" and tried to make the most of it. He received great benefit from the

climate and frequently said it was "God's Country" and enjoyed its advantages and beauties. He told Tucker, an old friend from Texas, "This is my home and I expect to live here the rest of my days," (D. 372) and told others that he would stay all the year round if there were not so many damn mosquitoes.

Voting and Taxation There.

Green never registered or attempted to vote in the State of Florida. The system of tax prevailing there called for the payment of annual taxes on the value of real and personal property there situated and in the case of residents, upon all of the intangible personal property of such residents. Green paid no intangible property taxes and on March 31st, 1933, wrote to the Tax Assessor of Dade County that his legal residence was in another State, which statement was accepted by the Assessor and he was told [*48] he * would not be subject to tax on his intangibles except on bank stocks there assessable. No effort was made to assess him as a resident.

In 1931 and again in 1933, his friend, Walter Allen, of Terrell, Texas, advised him to change his legal residence from Texas to Florida because of certain pending tax legislation in Texas. After consulting his attorney, Charles W. Pierson, who advised him what legal steps were necessary to make a change of domicile and that as he had a residence in Florida it would only be necessary to make a formal announcement of his intention,—Green did nothing (Fla. Exc. 37)

Footnote 44:

Massachusetts understands that the Exception does not challenge the accuracy of the facts stated in the finding. We shall not attempt to summarize the Exception, but we do agree with the claim made in the Exception that the change of residence proposed to Green by Allen was conceived by the parties to be a technical change for tax purposes, and not a change in respect to where Green would actually live and have his real home.

and as late as March 29th, 1935, he testified, under oath, in a judicial proceeding in Florida that Texas was his legal residence. (D. 98, 226-231.)

APPLICABLE PRINCIPLES OF LAW.

The foregoing Findings of Fact indicate that the factors usually relied upon in the determination of domicile are here of little assistance.

Green was born in England; reared and educated in Vermont, Massachusetts and New York; in early manhood he adopted Texas as his domicile of choice and lived there for twenty years; married in Illinois and thereafter lived with his wife in domestic establishments in New York, Massachusetts and Florida; maintained a business office in New York for twenty-five years preceding his death; declared in his Will and legal documents and consistently maintained up to the time of his death that Texas was his legal residence; died in New York and was buried at Bellows Falls, Vermont, where his parents were interred, after services conducted at Round Hills, Massachusetts.

The four persons who were nearest to him in life—his wife, his sister, Mr. Potter, his office manager, and Mr. Marshall, his secretary—have been able to give but little aid in the solution of this problem.

Mrs. Green, an original party to this cause, filed an answer in which she asserted Texas to be the domicile of herself and husband. She was represented by counsel at the hearings in Texas and was a party to the probate proceedings in New York, opposing the domiciliary claims of that State. When this New York proceeding resulted in a settlement with Mrs. Wilks, Mrs. Green disappeared from this case and there is nothing in the record to indicate [*49] that she * resumed her former Texas domicile as she might have done at any time after her husband's death. On the contrary the evidence shows she remained

at Round Hills for six months thereafter. We can only surmise that she may have been influenced in claiming Texas by the advantages which might accrue from the community property laws of that State and that she may have been deterred from returning there by the local criticism which the witness McDonald referred to or because she had found the social environment of Round Hills and Star Island more congenial.

Mrs. Wilks in her answer in this case as well as in the New York proceeding, (where she claimed under her brother's Will in which he declared Texas to be his legal residence) has denied that he was a resident of Texas and through her counsel in this proceeding asserts that his domicile at the time of death was in Massachusetts.

Neither Mrs. Green nor Mrs. Wilks has given any evidence to explain the inconsistency between Green's declarations and his actions or the conflict between themselves upon this issue of domicile.

Mr. Potter, his office manager and the representative of the Green Estate, whose testimony has been relied upon by all of the parties to the case, willingly produced the books, records and correspondence of Green and of his family holding companies, testified that from their first association in New York until his death Green claimed Texas as his legal residence and in his instructions to all at the office insisted that that State be given as his permanent residence in all legal papers. Walter Marshall, his secretary, testified to the same effect; but neither was able to give any intimation of the real intention behind Green's declarations and actions except what may be inferred from his evident desire and frequently announced purpose to escape and minimize taxes.

The desire to keep down taxes may be a perfectly proper reason for making a change of domicile (*McCready vs. Kelley*, 138 Mass. 372).

Where, as here, declarations and conduct are in conflict, declarations alone do not afford any safe guide in determining the issue, especially where they have been inspired by selfish motives (Tex. Exc. 39).

Footnote 45:
The point involved is one of law.

Re *Trowbridge*, 266 N. Y. 283;
Re *Newcomb*, 192 N. Y. 250.

[*50] * These two cases bear many points of resemblance to the case at bar and deserve careful consideration.

When the essential requirements of actual residence and intention, as indicated by declarations, do not agree, it becomes necessary, in order to ascertain domicile, to make a minute inquiry into the habits, character, pursuits, social and domestic relations, business and political affairs and indeed the whole history of the person from his youth to his death,—the conclusion depending upon the weight of all of the evidence and the facts and circumstances in favor or against the conflicting places of residence.

Thayer v. *Boston*, 124 Mass. 132, and other cases, 19 Cor. Jur., Sec. 72, C. 1, p. 435.

Expressions of desire to retain a domicile in one State cannot prevail over the intention to make a new home in another State as manifested by actual removal thereto and manner of living.

Dorrance's Estate, 309 Pa. 151, 163 A. 303.

Conduct is of greater evidential value than mere declarations of intent (Tex. Exc. 37).

Footnote 46:
The point involved is one of law.

Kennan Res. and Dom. 86;
Beale's Conflict of Laws, 253, 254;
Re *Trowbridge*, *supra*.

Declarations must, of course, be considered in connection with other facts as an index of intention, written being given greater weight than oral, but they have been termed the lowest species of evidence and are of no value when *made for the purpose of creating evidence in favor of the declarant after he has become appreciative of the consequences resulting from a change of domicile* (Tex. Exc. 38).

Footnote 47:
The point involved is one of law.

19 Cor. Jur. Sec. 76, 5, pp. 439-40;
Canadian Pacific Railway v. *Wenham*, 146 Fed. 207-8.

In explaining the statutes of Texas relating to the regulation of elections, counsel state in their memorandum (p. 27):

"We may add, appropriately, we think, that while Col. Green hal ually exercised the privilege of voting in Texas, Article 2958 had application to him and restricted his right to his residence as defined, namely, to the place where he usually slept at night. When he took up his actual [*51] abode * in other States, and no longer had a place of residence in Texas, it is manifest that the standard of this statute not only had no further application to him, but it is obvious that it was incapable of application. Since he had no 'place where he usually slept at night' (in Texas) the test could no longer be applied. The old residence continued to control, just as when he lived in the State."

Counsel had previously pointed out in their citation from 5 Tex. Jur. 708-9, that under the law of Texas two things must concur to constitute domicile: First, residence and second, the intention of making the place of residence one's home (Tex. Exc. 18).

Footnote 48:
The point involved is one of law.

The undisputed facts clearly show, as this admission of counsel indicates, that after 1911 Green no longer had a place of residence in Texas. *The domicile of choice which he established in Texas in 1892 and maintained until 1911 was abandoned in fact and his domestic establishment and all of his personal belongings removed to New York* (Tex. Exc. 17).

Footnote 49:

This finding is of mixed law and fact. In so far as it is a finding of fact, it is amply supported by the preponderance of all the evidence.

His intention to return to Texas might be presumed while temporarily residing in New York engaged in the conduct of his own and his mother's business, if he had done nothing inconsistent with the intention to return (Fla. Exc. 38).

Footnote 50:

This finding is amply supported by the evidence. See Massachusetts' Brief dealing with Green's intentions during the period after he was called to New York by his mother.

After his mother's death in 1916, his marriage in 1917 and he had come into the full enjoyment of his fortune and was free from restraint, Green might have returned to Texas and re-established himself in an actual permanent home there. Instead of doing so, he relinquished his nominal abode which he had obtained by renting a room in the house of Mrs. Jarvis in Terrell, which he never occupied (N.Y. Exc. 59; Tex. Exc. 10),

Footnote 51:

Both New York and Texas object to this finding on the ground that the room in the house of Mrs. Jarvis, in Terrell, was not retained until Hetty Green's death, but was given up several years before, in 1914. Massachusetts acquiesces in this exception. The rent was paid for three years and then stopped, and the room was no longer held for him (R. 25).

New York further excepts to the finding on the ground that "what Green might have done after his mother's death and his marriage is purely speculative." It is respectfully submitted that there is nothing any more speculative about what Green might have done than about any of the findings relative to Green's intent, all of which must be inferences drawn by the Master from the evidence in respect to Green's character and what he said and did. The finding is not speculative, and it is amply supported by the preponderance of all the evidence. See Massachusetts' Brief dealing with Green's intentions during the period after he was called to New York by his mother.

and in the visits he made to Texas in subsequent years to attend the meetings of his Railroad Directors, to vote, or for the purpose of taking medical treatment, he stopped at hotels or at the Buie Sanitarium at Marlin. After 1921, these visits ceased or were diminished and he visited Texas only for treatment at Marlin. The suggestion of his friends that he purchase a house at Marlin and take up his residence there met with no response from him. *Instead of returning to Texas, almost immediately after his marriage he went to Round Hills, Massachusetts, where he and his sister owned what he regarded as an ancestral tract of land, purchased additional land and there proceeded to erect a palatial home which was completed and occupied by him in 1921* (Tex. Exc. 11).

Footnote 52:

Massachusetts believes that this finding is amply supported by the evidence. See paragraphs 8, 9, 10 and 11, Part I of the Appendix.

[*52] * During the interval between 1917 and 1921, he spent much of his time at South Dartmouth superintending the building operations.

Thus, we have the actual abandonment of the Texas domicile of choice and the actual acquisition of a new home in Massachusetts (Tex. Exc. 43, 44).

Footnote 53:

Massachusetts understands that the Texas Exceptions do not dispute the physical abandonment of an actual place of residence in Texas or the physical acquisition of an actual place of residence in Massachusetts, because those facts are undisputed. In so far as the finding relates to the ultimate conclusion of an abandonment of a domicile in Texas and the acquisition of a real home in Massachusetts, it is amply supported by a preponderance of all the evidence.

Undoubtedly residence unless combined with intention cannot effect a change of domicile but where the declarations are self-serving or made with intention to deceive, they will be disregarded and the conduct of the party alone govern (Tex. Exc. 12, 20).

Footnote 54:

The point involved is one of law.

After 1921, Green's declarations that he had a legal residence in Texas were made to the taxing officials of New York, Massachusetts and Florida for the purpose of escaping taxation in those jurisdictions. As a matter of fact, he had no actual abode or residence in Texas, and in law, had abandoned his former home there (Tex. Exc. 13, 45).

Footnote 55:

Texas Exc. No. 13 relates particularly to the first sentence of the above finding and makes the point that there is no evidence to justify an alleged implication in the finding that Green deceived the taxing authorities of the Respondent States, and makes the further point that the taxing authorities of the Respondent States always had full opportunity to observe and consider all the material facts relative to domicile. Massachusetts makes no claim that Green intended to make any misstatements or misrepresentations, and does not believe the Master intended to find that he did. See footnotes 57 and 58, *infra*. There is ample evidence to support the Master's finding that Green's attempt to maintain a "legal residence" in Texas was for purposes of tax economy.

Texas Exc. No. 45 deals particularly with the second sentence of the above finding. It does not dispute the accuracy of the fact stated, but raises the legal point that a Texas domicile is possible nevertheless.

He could not elect to make his home in one place for the general purposes of life and in another place for the purpose of taxation.

Feehan vs. *Tax Com.*, 237 Mass. 169, 171;
Re *Trowbridge, supra.*

As Mr. Justice Holmes said in *Dickinson* vs. *Brookline*, (181 Mass. 195, 196), "When you intend the facts to which the law attaches a consequence, you must abide the consequence whether you intend it or not".

National City Bank vs. *Hotchkiss*, 231 U. S. 50, 56.

In *Gilbert* vs. *David*, 235 U. S. 561, 570, Mr. Justice Day said:

"Applying these definitions to the conduct of plaintiff, we have no doubt that the court was right in holding that he had acquired a new domicile in the State of Connecticut. He removed there with his family, and occupied a house to which he held the title. He owned other real estate in Connecticut,

inherited from his uncle. He took a letter from his church in Michigan to a church in Danbury, Connecticut. For about ten years he was not back in Michigan, except for a short time, and then for a temporary purpose. The Michigan homestead and much of the furniture used there were sold upon the removal to Connecticut. For more than ten years he resided continuously with his family in the same house in Danbury, Connecticut. While the plaintiff did not vote in Connecticut, as far as the record shows, it is in evidence that he declared to another his intention of becoming [*53] a voter * there. To some witnesses he declared his purpose to reside in Connecticut. As against this testimony, it appears that he left his desk with his brother-in-law in Michigan, which he declared was for the purpose of 'holding his residence there.' To some witnesses he declared his intention to live in Michigan and expressed his preference for that State as a dwelling-place. He continued to pay membership dues to orders to which he belonged in Michigan.

"It is apparent from all the testimony that the plaintiff may have had, and probably did have, some floating intention of returning to Michigan after the determination of certain litigation and the disposition of his property in Connecticut, should he succeed in disposing of it for what he considered it worth. *But, as we have seen, a floating intention of that kind was not enough to prevent the new place, under the circumstances shown, from becoming his domicile*" (Tex. Exc. 21).

Footnote 56:

The point involved is one of law.

It was his place of abode, which he had no present intention of changing, that is the essence of domicile."

Green, although carefully advised by able counsel, did not have this legal conception of domicile. *He was nomadic in his tastes and evidently regarded domicile as something distinct*

and apart from home or residence. Home to him was where he happened to be for the time being with his wife and domestic establishment (Tex. Exc. 14, 22, 23, 24).

Footnotes 57 and 58:

We do not undertake to summarize Texas Exc. Nos. 14, 22, 23 and 24 relative to this finding. We respectfully submit that what the Master had in mind was that it was Green's manner to refer to wherever he happened to be living at the moment as home, and that he entertained the mistaken idea that he was entitled to have a legal residence in some place other than his home, even though he did not live there or intend to live there. If this is the meaning of the finding, we submit that it is fully supported by the preponderance of all the evidence. For declarations in which Green referred to Round Hills, Massachusetts, as his home, see paragraph 55, Part I of this Appendix.

In the early days in Texas, it was his bachelor quarters in an old Opera House at Terrell, a converted building in the business district of Dallas or in his private railroad car. In New York, rooms, simply furnished, in an old house owned by his grandfather's estate or in an expensive hotel apartment at the Waldorf or Sherry-Netherland. Later, he made his home on the yacht "United States" or on one of his house boats in Massachusetts or Florida waters, and in the closing years of his life, in palatial homes which he seasonally occupied at Round Hills, Massachusetts, and Star Island, Florida. *He told his attorney, Charles W. Pierson, in 1931 that he had no sentiment where his legal residence might be* (D. 191) (Tex. Exc. 42).

Footnote 59:

The exception does not object to the accuracy of this finding, but merely to its evidentiary value.

To him domicile was a mental state where he could obtain certain political advantages and freedom from taxation. He was not interested in making a home for posterity because he and his sister were the last of their line (Tex. Exc. 22; Fla. Exc. 39).

Footnote 60:

Part of these Exceptions relate to points of law. In so far as they relate to the fact of Green's mental state, reference is made to footnotes 57 and 58, *supra*.

He did have some unformulated notion of leaving a

memorial to his mother, his sister and himself and the granite edifice at South Dartmouth on the land that had been in his family for generations, surrounded
[*54] *by mari-* time antiquities in which the Green fortune originated, with mementoes suggestive of his whaling ancestors, seemed to him to be the most appropriate memorial he could leave after death and the most permanent home he could enjoy while living* (N.Y. Exc. 71; Fla. Exc. 40).

Footnote 61:

Massachusetts believes that this finding is amply supported by the evidence. See paragraph 12, Part I of this Appendix.

There is no sufficient evidence to show that Green ever intended to make New York his permanent home (Fla. Exc. 41; Tex. Exc. 16, 41).

Footnote 62:

New York has filed no exception to this finding, and the Texas Exceptions do not challenge the accuracy of this finding, but object that similar findings should have been made in respect to Massachusetts and Florida.

We are not certain whether the Florida Exception objects to the accuracy of the finding or merely to the supposed manner in which the Master reached the conclusion stated in the finding. In any event, the finding is amply supported by the evidence. See Massachusetts' Brief dealing with Green's intention during the period after he was called to New York by his mother.

He rejected the suggestion when it was made to him by Mrs. Green and Mrs. Stafford in 1917 or 1918; he made no effort to become a voter in New York after he stopped voting in Texas; he owned no real estate there except what he acquired as a result of the foreclosure of mortgages and paid no personal or income taxes to New York. He had no close friends in that City and did not like the life or the people. After 1921, he was unable to go to theaters or baseball games as theretofore and was compelled to spend his time indoors and adopt hobbies which replaced his outdoor activities. He removed all of the furnishings of his former residence, 5 West Ninetieth Street and all of the early associations with his mother, except a few of her letters, to South Dartmouth.

In a sworn statement to the taxing officials of New York, he declared that he was not and never had been a resident of New York (Fla. Exc. 42; N.Y. Exc. 67).

Footnote 63:

This finding is clearly supported by the evidence. Green's affidavits (Tex. Exs. 32-3) appear at pages 59 and 60 of the Digest. There are two affidavits, verified November, 1916, and they aver, *inter alia:* "I am not and never was a resident of the City of New York or of the State of New York."

He never went to his office, 111 Broadway, after 1921 and carefully refrained from visiting the City during the last years of his life because of pending litigation. At the time of his death, his apartment in the Sherry-Netherland was under a temporary lease and for many years had been occupied by him for brief periods in the Spring and Fall while *en route* from Massachusetts and Florida.

This domicile actually established in Massachusetts in 1921, notwithstanding the mental reservation of his Texas residence, was not abandoned when he built his Star Island home (Fla. Exc. 43).

Footnote 64 :

This is an ultimate fact which the Master was fully justified in finding upon the preponderance of all the evidence.

He went to Florida on the advice of his physician in 1924 and after living in hotels and on house boats, purchased three lots and built a beautiful home which he luxuriously furnished with everything necessary for his comfort. In Florida, he was able to be out daily in the sunshine and to avoid the chill of Northern Winters and obtained relief from the arthritic condition which was sapping his vitality. Doubtless those who have visited both Round Hills and Star Island would prefer to live at the latter place, where there is every convenience, almost perpetual sunshine and a home-like atmosphere. *But under the authorities, the*

[*55] *adoption of a changed location or a * subsidiary or secondary home for the sake of health does not con-*

stitute the abandonment of the old and the acquisition of a new domicile (Fla. Exc. 45).

Footnote 65:

The point involved is one of law.

His old friend, Walter Allen, of Terrell, Texas, who had been keeping him advised regarding the tax laws of Texas, *and his personal counsel, Charles W. Pierson, in 1931 and again in 1933, advised him to formally adopt Florida as his legal residence* (D. 192, 226, 229) (N.Y. Exc. 75),

Footnote 66:

The letter from Pierson to Green will speak for itself. It is printed at page 226 of the Master's Digest of the testimony.

but he made no attempt to do so; *never voted there, never paid any intangible or income taxes in Florida and as late as 1935, in a judicial proceeding in Florida, testified that he was a resident of Terrell, Texas* (Fla. Exc. 46),

Footnote 67:

The Exception does not challenge the accuracy of this finding, but objects to the supposed significance given to it by the Master in reaching his conclusion. It further states that Florida had no income tax. Florida did, however, have a tax on intangibles owned by its residents, which Green did not pay. See Report, p. 47, to which no exception on this point has been made.

and had a Summer home at Round Hills, where he spent about six months of each year and divided the remainder of the year between New York, Texas and Florida. Doubtless he enjoyed life in Florida, liked the people, frequently said it was "God's Country" but *did not attempt to make it his own* (Fla. Ex. 48).

Footnote 68:

This is an ultimate fact which is amply supported by the preponderance of all the evidence.

He was sent from Florida by his physician, Dr. Roche, to Lake Placid, New York, in his last illness. The Star Island home was closed when he left and the servants sent to Round Hills. His trunks and belongings were shipped

there and after his death his remains were brought to Round Hills for the funeral services. To Round Hills was shipped the bulk of his collections of stamps, coins and jewels. *Star Island was left in charge of a caretaker and was only visited by Mrs. Green to remove some of her personal possessions* (Fla. Exc. 49).

Footnote 69:

Massachusetts concedes that there is no positive proof to show that Mrs. Green's *sole* purpose in visiting Star Island was to remove some of her personal possessions, but submits that this is an inference that the Master could fairly make from all of the evidence and the circumstances. The fact that Star Island was left in charge of a caretaker was clearly supported by the evidence (Donn, Ev. 8141, D. 348).

When a person who has capacity to acquire a domicile of choice has more than one home, his domicile is in the earlier home, unless he regards the second as the principal home (Tex. Exc. 36).

Footnote 70:

The point involved is one of law.

Beale's Conflict of Laws, Sec. 24.3, p. 189;
In re *Barrow*, U. S. District Court (Mich.) 26 Fed. (2d) 106.

Beale, at page 190, says:

"*The true criterion, therefore, for determining the domicil where there are two homes, seems to be the determination of the order of acquisition of the two homes* (Fla. Exc. 44).

Footnote 71:

The point involved is one of law.

The one which having been first acquired became a domicil remains the domicil, in spite of the establishment of the new home; and the second home, therefore, cannot be a legal domicil so long as the first one remains an actual home.

* * * * * * * *

"A common example of the existence of two actual homes is the case of a person who has at the same time a
[*56] home * in the country which he occupies during a part of the year and a home in the city which he occupies during the remainder of the year. It has been often urged in such a case that the only home at any one time is the one of these two places which for the time the person is occupying; that he carries his *lares* and *penates* with him, and sets them up for the time being in the residence which he is then occupying."

If, as counsel for the defendants say, we must disregard Green's early history, except in so far as it furnishes a historical background, and determine what was his actual domicile at death by considering which of his three residences was the principal, predominant or permanent home, we arrive at the same end (Tex. Exc. 46).

Footnote 72:

The point involved is one of law.

Round Hills was not only the earlier home but as the Findings of Fact show, it was the principal, predominant and permanent home when compared with the Star Island residence (Fla. Exc. 50).

Footnote 73:

This is an ultimate fact which is amply supported by the preponderance of all the evidence.

A portion of the Round Hills Estate had been in Green's family for many generations; it was within a few miles of New Bedford, where his mother was born and raised; it contained almost all of his *lares et penates* and portraits of his ancestors; he had there assembled, at great expense, mementoes of his ancestors and of the whaling industry in which the Green fortune originated; it was there that most of his interests and activities were centered before illness restricted them; he had invested nearly $7,000,000 at Round

Hills as compared with $1,500,000 at Star Island and over a period of years he usually spent five and one-half months there as compared with four and one-half months at Star Island.

Much evidence was given to show that it was designed and constructed to be converted into a museum or memorial of some kind; whereas Star Island was a beautiful private residence. But the monumental character of Round Hills does not detract from its serviceability as a residence and it was occupied as such from the time of its completion until Green's death. *Mrs. Green looked forward to the time when she might be left alone and had selected a site and considered plans for a small cottage on the South Dartmouth estate which were never carried out* (N.Y. Exc. 72; Fla. Exc. 51).

Footnote 74:

The finding is clearly supported by the evidence. Berglund, Ex. 775, p. 281; Neyland, Ex. 6718, p. 181; Davis, Ex. 6513, p. 107; Ex. 6001, p. 108.

This massive edifice on the rocks at Newport would be regarded as simply another millionaire's palace but [*57] on the sandy shores of Buzzards Bay it is not in keeping with the Summer cottages nearby. This may be evidence of Green's lack of taste but is no evidence of his intention not to regard it as a home. Throughout the country many large and palatial residences have been converted into institutions and Green may have had this idea in building the Round Hills mansion. The photographs attached to this Report fairly represent both residences. *Both were homes but Round Hills was the earlier, predominant and principal home* (Fla. Exc. 52).

Footnote 75:

This is an ultimate fact which is amply supported by the preponderance of all the evidence.

CONCLUSIONS.

Upon a careful consideration of all of the evidence in the case and the memoranda submitted by counsel for the respective parties, I find that the domicile of Edward Everhard Robinson Green at the time of his death June 4th, 1916, in fact and in law, was in the Commonwealth of Massachusetts (N.T. Exc. 77; Tes. Exc. 49).

Footnote 76:

This is an ultimate fact which is simply supported by the preponderance of all the evidence.

P.P. 19-6

SUPREME COURT OF THE UNITED STATES.

No. 11, Original.—October Term, 1938.

State of Texas, Complainant,
vs.
State of Florida, et al., Defendants. } In Equity.

[March 13, 1939.]

Mr. Justice Stone delivered the opinion of the Court.

This original suit, in the nature of a bill of interpleader, brought determine the true domicile of decedent as the basis of rival ims of four states for death taxes upon his estate, raises two prin- al questions: Whether this Court has jurisdiction of the cause l, if so, whether the report of the Special Master, finding that edent at the time of his death was domiciled in Massachusetts, uld be confirmed.

On March 15, 1937, this Court granted the motion of the State Texas for leave to file its bill of complaint against the States of rida and New York and the Commonwealth of Massachusetts, against decedent's wife, Mabel Harlow Green, and his sister, ty Sylvia Ann Howland Green Wilks, both alleged to be resi- ts of New York. The bill of complaint alleges that Edward H. R. en died at Lake Placid, New York, on June 8, 1936, leaving sur- ng him his wife and sister as his only heir and next of kin; he left a gross estate of approximately $44,348,500, and a net es- valued at $42,348,500, comprising real estate and tangible per- l property located in Texas, New York, Florida and Massachu- , of an aggregate value of approximately $6,500,000, and in- ible personal property consisting principally of stocks, bonds securities, the paper evidences of most of which were located in York.

e bill of complaint alleges that decedent, at the time of his h, was domiciled in Texas, but that Florida, New York, and achusetts each asserts, through its taxing officials, that de- t was at the time of his death domiciled within it. It al- in detail that Texas and each of the defendant states main- and enforces a system of taxation upon the inheritance or suc-

cession of the estates of decedents domiciled within the state at death, under which laws real estate and tangible personal property located within the state and all intangibles, regardless of their situs, are subjected to the tax; that each of the four states asserts and proposes to exercise the right to tax the estate of decedent on the assumption that decedent was domiciled within it at the time of his death; and that certain judicial proceedings have been instituted in each of the four states for the administration of decedent's estate or some parts of it.[1] It is further alleged that none of the four states and no officer or representative of any state, except as already noted, has become a party to any of those proceedings, and that no state or its officer or representative will appear or become a party to any such proceedings instituted in any other state to fix or assess death taxes on decedent's estate, and that no judgment in any such proceeding will be binding on any state not a party to it; that each of the four states claims a lien for taxes and the right to collect a tax, based on decedent's alleged domicile within it, upon the tangibles located in the state and upon all decedent's intangibles wherever located, the total of such claims amounting to a sum far greater than the net value of the estate; that the amount of decedent's property located in Texas is negligible in amount and insufficient to pay its tax; and in the event that the states should obtain adjudications in their own or other courts in pending proceedings, or others instituted for the purpose of collecting the tax on the ground that decedent was domiciled elsewhere than in Texas, Texas would be deprived of its lawful tax. The bill prays that the Court determine whether decedent's domicile, for purposes of taxa-

[1] The allegations are that on July 28, 1936, decedent's wife was appointed temporary administratrix of decedent's estate in Texas on an allegation that Green had died intestate and was domiciled at death in Texas; that on August 1, 1936, a proceeding was begun by decedent's sister in the Surrogate's Court of Essex County, New York, for the probate of decedent's will and for her confirmation as the executrix named in the will, in which proceeding she alleged that decedent, a non-resident of New York, had died there, leaving personal property located in the state, and in which proceeding a temporary administrator was appointed and decedent's wife and the New York Tax Commissioner entered their appearances; that on August 31, 1936, decedent's wife commenced an action in the United States District Court for northern Texas against decedent's sister to determine the rights of the former in the estate of decedent by reason of an alleged antenuptial agreement which purported to exclude the wife from any interest in decedent's property; that on October 21, 1936, on application of the Massachusetts Commissioner of Corporations and Taxation, a special administrator of the estate of decedent was appointed by a Massachusetts probate court to take possession of and conserve decedent's property in that commonwealth; and that on January 4, 1937, the County Judges' Court of Dade County, Florida, appointed decedent's widow administratrix of the estate of her husband located in Florida.

ion, was in either of the defendant states and that particularly it
letermine and adjudicate that his domicile was in Texas and that it
lone has the right to assess and collect death taxes on decedent's
ntangibles.

The several defendant states, answering, admit that decedent's
state is insufficient to satisfy the total amount of the taxes
laimed. All deny that Green was domiciled in Texas, and by way
f counterclaim and cross-bill against the other defendants, each
serts that he was domiciled in it and that it is entitled to
ollect death taxes upon all of decedent's intangible property and
pon all his tangibles within the state. The answer of decedent's
ife admitted that he was domiciled in Texas and asserted that by
exas law she owned, as community property, one-half of substan-
lly all of decedent's estate acquired by him after their marriage,
e and clear of all death taxes. Pursuant to stipulation showing
t she had released all interest in decedent's estate, the suit was
nissed as to her by order of the Court on January 17, 1938. 302
S. 662. The answer of defendant Wilks, decedent's sister, denies
t Green was domiciled in Texas and asks the Court to determine
which of the defendant states he was domiciled for purposes of
ation.

n June 1, 1937, this Court appointed a Special Master, 301
S. 671, to take evidence, to make findings of fact and state con-
ions of law, and to submit them to this Court, together with his
ommendations for a decree. The Special Master has reported
findings, with certain evidentiary facts, and his finding that
dent at the time of his death was domiciled in the Common-
lth of Massachusetts, this latter conclusion being supported by
erate subsidiary findings. The case is now before us on excep-
s to the Special Master's conclusions of fact and subsidiary find
that decedent's domicile was in Massachusetts at the time of
leath.

SDICTION.

hile the exceptions do not challenge the jurisdiction of the
, the novel character of the questions presented and the duty
h rests upon this Court to see to it that the exercise of its
rs be confined within the limits prescribed by the Constitution
s incumbent upon us to inquire of our own motion whether
se is one within its jurisdiction. *Minnesota* v. *Hitchcock*,
S. 373, 382. By the Judiciary Article of the Constitution,

the judicial power extends to controversies between states, and this Court is given original jurisdiction of cases in which a state shall be a party. Art. III, § 2. The present suit is between states, and the other jurisdictional requirements being satisfied, the individual parties whose presence is necessary or proper for the determination of the case or controversy between the states are properly made parties defendant. Cf. *United States* v. *West Virginia*, 295 U. S. 463, 470. So that our constitutional authority to hear the case and grant relief turns on the question whether the issue framed by the pleadings constitutes a justiciable "case" or "controversy" within the meaning of the Constitutional provision, and whether the facts alleged and found afford an adequate basis for relief according to accepted doctrines of the common law or equity systems of jurisprudence, which are guides to decision of cases within the original jurisdiction of this Court. See *Robinson* v. *Campbell*, 3 Wheat. 212, 222, 223; *Pennsylvania* v. *Wheeling and Belmont Bridge Co.*, 18 How. 460, 462; *Irvine* v. *Marshall*, 20 How. 558, 564, 565; *Payne* v. *Hook*, 7 Wall. 425, 430.

Before the Constitution was adopted a familiar basis for the exercise of the extraordinary powers of courts of equity was the avoidance of the risk of loss ensuing from the demands in separate suits of rival claimants to the same debt or legal duty. *Almete* v. *Bettam*, Cary, 65 (1560); *Hackett* v. *Webb and Wilkes*, Finch 257 (1676); see 9 Viner Abr., 419-440; 1 Spence, The Equitable Jurisdiction of the Court of Chancery, 659; Maclennan, Law of Interpleader, 5 *et seq.* Since, without the interposition of equity, each claimant in pursuing his remedy in an independent suit might succeed and thus subject the debtor or the fund pursued to multiple liability, equity gave a remedy by way of bill of interpleader, upon the prosecution of which it required the rival claimants to litigate in a single suit their ownership of the asserted claim. A plaintiff need not await actual institution of independent suits; it is enough if he shows that conflicting claims are asserted and that the consequent risk of loss is substantial. *Evans* v. *Wright*, 13 W. R. 468; *Michigan Trust Co.* v. *McNamara*, 165 Mich. 200; *Webster* v. *Hall*, 60 N. H. 7; *Thompson* v. *Ebbets*, Hopk. Ch. 272 (N. Y.); *Horn* v. *Fox*, 61 N. Y. 264; *Yarborough* v. *Thompson*, 3 Sm. & M. (11 Miss.) 291, 294; 4 Pomeroy, Equity Jurisprudence (4th ed.) §§ 1319-1329, 1458-1482; Maclennan, *supra*, 119.

The peculiarity of the strict bill of interpleader was that the plaintiff asserted no interest in the debt or fund, the amount of which he placed at the disposal of the court and asked that the rival

claimants be required to settle in the equity suit the ownership of the claim among themselves. But as the sole ground for equitable relief is the danger of injury because of the risk of multiple suits when the liability is single, *Farley* v. *Blood*, 30 N. H. 354, 361; *Bedell* v. *Hoffman*, 2 Paige 199, 200; *Mohawk and Hudson R. R.* v. *Clute*, 4 Paige 384, 392; *Atkinson* v. *Manks*, 1 Cowen (N. Y.) 691, 703; Story, Equity Pleadings (10th ed.) §§ 291, 292, and as plaintiffs who are not mere stakeholders may be exposed to that risk, equity extended its jurisdiction to such cases by the bill in the nature of interpleader. The essential of the bill in the nature of interpleader is that it calls upon the court to exercise its jurisdiction to guard against the risks of loss from the prosecution in independent suits of rival claims where the plaintiff himself claims an interest in the property or fund which is subjected to the risk. The object and ground of the jurisdiction are to guard against the consequent depletion of the fund at the expense of the plaintiff's interest in it and to protect him and the other parties to the suit from the jeopardy resulting from the prosecution of numerous demands, to only one of which the fund is subject. While in point of law or fact only one party is entitled to succeed, there is danger that recovery may be allowed in more than one suit. Equity avoids the danger by requiring the rival claimants to litigate before it the decisive issue, and will not withhold its aid where the plaintiff's interest is either not denied or he does not assert any claim adverse to that of the other parties, other than the single claim, determination of which is decisive of the rights of all. *Pacific National Bank* v. *Mixter*, 124 U. S. 721; *Providence Sav. Life Assur. Soc.* v. *Loeb*, 115 Fed. 357; *Merchants National Bank* v. *Shubert Theatrical Co.*, 238 Fed. 225, 151 Fed. 247 Fed. 256; *Illingworth* v. *Rowe*, 52 N. J. Eq. 360; *Carter* v. *Carter*, 68 N. J. Eq. 24; 2 Story, Equity Jurisprudence (14th ed.) § 1440; Story, Equity Pleadings (10th ed.) § 297b; Chafee, Cases on Equitable Remedies, 75 *et seq.*; 3 Daniell, Chancery Pleading and Practice (6th Amer. Ed.) 1572; Maclennan, *supra*, 338 *et seq.*

When, by appropriate procedure, a court possessing equity powers in such circumstances asked to prevent the loss which might otherwise result from the independent prosecution of rival but mutually exclusive claims, a justiciable issue is presented for adjudication which, because it is a recognized subject of the equity procedure which we have inherited from England, is a "case" or "controversy", within the meaning of the Constitutional provision; and when the case is one prosecuted between states, which are the rival claimants, and the risk of loss is shown to be real and substantial,

the case is within the original jurisdiction of this Court conferred by the Judiciary Article. *See Nashville, C. & St. L. Ry.* v. *Wallace*, 288 U. S. 249, 261 *et seq.*, and cases cited.

Here it is conceded by the pleadings and upon brief and argument that the sole legal basis asserted by the four states for the imposition of death taxes on decedent's intangibles is his domicile at death in the taxing state. There is no question presented of a situs of decedent's intangibles differing, for tax purposes, from the place of his domicile, such as was considered in *New Orleans* v. *Stempel*, 175 U. S. 309; *Safe Deposit & Trust Co. of Maryland* v. *Virginia*, 280 U. S. 83; *Beidler* v. *South Carolina Tax Commission*, 282 U. S. 1, 8; *First National Bank* v. *Maine*, 284 U. S. 312, 331; *Wheeling Steel Corporation* v. *Fox*, 298 U. S. 193, 210; *First Bank Stock Corporation* v. *Minnesota*, 301 U. S. 234, 237, 238; *Long* v. *Stokely*, 175 Tenn. ——, probable jurisdiction noted, Nov. 14, 1938, *Graves* v. *Elliott*, 274 N. Y. 10, certiorari granted November 14, 1938. And no determination made here as to domicile can hereafter foreclose the determination of such questions by any court of competent jurisdiction in which they may arise. By the law of each state a decedent can have only a single domicile for purposes of death taxes, and determination of the place of domicile of decedent will determine which of the four states is entitled to impose the tax on intangibles so far as they have no situs different from the place of domicile. No relief is sought to restrain collection of the tax or to interfere with the determination of its amount by appropriate state procedure.

The Special Master has found that each of the four states in good faith asserts that the decedent was domiciled within it at his death; that prior to the commencement of these proceedings each state in good faith was preparing to enforce a lien on decedent's intangibles wherever located and would now be taking appropriate action but for these proceedings; and that the net estate is not sufficient to pay the aggregate amount of the taxes claimed by the states and by the federal government.[2] He has also found, as averred in

[2] The Special Master has found as follows: The net estate, after payment of debts and administration expenses other than death taxes, will amount to $36,137,335; and the tangible property taxable in the state of its situs is as follows:

Texas	$2,220.00
Florida	222,276.00
New York	1,583,221.00
Massachusetts	2,438,707.00

Decedent's intangibles at the time of his death had a value of $35,831,580. The paper evidences of decedent's intangibles were located outside of the

the pleadings, that none of the four states has become or will consent to become a party to any proceedings for determining the right to collect the tax in any other state; that the right of Texas to assert its tax lien and to prosecute its claim for taxes with success is in jeopardy and that it is without adequate remedy save in this Court.

The risk that decedent's estate might constitutionally be subjected to conflicting tax assessments in excess of its total value and that the right of complainant or some other state to collect the tax might thus be defeated was a real one, due both to the jurisdictional peculiarities of our dual federal and state judicial systems and to the special circumstances of this case. That two or more states may each constitutionally assess death taxes on a decedent's intangibles upon a judicial determination that the decedent was domiciled within it in proceedings binding upon the representatives of the estate, but to which the other states are not parties, is an established principle of our federal jurisprudence. *Thormoon* v. *Frame*, 176 U. S. 350; *Overby* v. *Gordon*, 177 U. S. 214; *Burbank* v. *Trust*, 232 U. S. 162; *Baker* v. *Baker, Eccles & Co.*, 242 U. S. 394; *Texas* v. *Stimmer*, 248 U. S. 115, 120, 121; *Worcester County Trust Co.* v. *Riley*, 302 U. S. 292, 299. And a judgment thus obtained is binding on the parties to it and constitutionally entitled to full faith and credit in the courts of every other state. *Milwaukee County* v. *White Co.*, 296 U. S. 268. The equity jurisdiction being founded on avoidance of the risk of loss resulting from the threatened prosecution of multiple claims, the risk must be appraised in the light of

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...es of Texas, Florida, and Massachusetts. "The aggregate value of the ...res of stock in and obligations of corporations and associations organized ...having a principal place of business in Texas, Massachusetts and Florida, re...ctively, and of the obligations of persons residing in said States and of the ...gations of said States and political subdivisions thereof, together with the ...e of the real estate and tangible property in Texas, Massachusetts and ...rida, respectively, is less than the amount of the tax claimed by each of said ...es and the amount of such tax claimed by Texas, Massachusetts, and Flor... respectively, greatly exceeds the value of the property subject to the jur...tions of their respective Courts and from which the tax might be collected ...y proceeding in said Courts." The Special Master found that the death ...s due to the United States, and due to each state, if its contentions be sus...ed, are as follows:

United States	$17,520,987
Texas	4,685,057
Florida	4,663,857
New York	5,910,301
Massachusetts	4,947,008
Total	$37,727,213

...exceeds the total net estate by the sum of $1,389,877. In addition the ... of New York asserts a claim for unpaid personal income taxes of ...,827.

the circumstances as they are in good faith alleged and shown to exist at the time when the suit was brought. Cf. *Clark* v. *Wooster*, 119 U. S. 322; *Rice & Adams* v. *Lathrop*, 278 U. S. 509; Maclennan, *supra*, 132 *et seq.* In this case, as will presently be noted, the relations of decedent to each of the demanding states was such as to afford substantial basis for the claim that he was domiciled within it, with fair probability that the claim would be accepted and favorably acted upon if there were no participation by the other states in the litigation. *See New Jersey* v. *Pennsylvania*, 287 U. S. 580; *Hill* v. *Martin*, 296 U. S. 393; *Dorrance's Estate*, 309 Pa. 151, certiorari denied, 287 U. S. 660, 288 U. S. 617; *In re Dorrance*, 115 N. J. Eq. 268; *Dorrance* v. *Martin*, 116 N. J. Law 362, certiorari denied, 298 U. S. 678. Cf. *Matter of Trowbridge*, 266 N. Y. 283. In addition the facts most essential to establishing that attitude and relationship of person to place which constitute domicile were in this case obscured by numerous self-serving statements of decedent as to his domicile, which, because made for the purpose of avoiding liability for state income and personal property taxes levied on the basis of domicile, tended to conceal rather than reveal the true relationship in this case. Taken as a whole the case is exceptional in its circumstances and in the principles of law applicable to them, all uniting to impose a risk of loss upon the state lawfully entitled to collect the tax.

We think that the Special Master's finding of jeopardy is sustained; that a justiciable "case" between the states is presented; and that a cause of action cognizable in equity is alleged and proved. The fact that no relief by way of injunction is sought or is recommended by the Special Master does not militate against this conclusion. While in most causes in equity the principal relief sought is that afforded by injunction, there are others in which the irreparable injury which is the indispensable basis for the exercise of equity powers is prevented by a mere adjudication of rights which is binding on the parties. This has long been the settled practice of this Court in cases of boundary disputes between states. *Louisiana* v. *Mississippi*, 202 U. S. 1; *Arkansas* v. *Tennessee*, 246 U. S. 158; *Georgia* v. *South Carolina*, 257 U. S. 516; *Oklahoma* v. *Texas*, 272 U. S. 21; *Michigan* v. *Wisconsin*, 272 U. S. 398; *New Jersey* v. *Delaware*, 291 U. S. 361. In the case of bills of peace, bills of interpleader and bills in the nature of interpleader, the gist of the relief sought is the avoidance of the burden of unnecessary litigation or the risk of loss by the establishment of multiple liability

when only a single obligation is owing. These risks are avoided by adjudication in a single litigation binding on the parties.

While courts of equity in such suits may and frequently do give incidental relief by injunction to secure the full benefits of the adjudication and to terminate the litigation in a single suit, they are not bound to do so and their adjudication of the conflicting claims is not any the less effective as res judicata because not supplemented by injunction. We do not doubt that when the equity powers of the Court have been invoked it has power in its discretion to give such incidental relief by way of injunction as will make its determination the effective means of avoiding risk of loss to any of the parties by reason of the asserted multiple tax liability. But the plenary effect of its decision as res judicata, and considerations of convenience in the levying of the tax by the usual state procedure, make it unnecessary and undesirable that the Court should proceed beyond adjudication. The fact that the Court, for reasons of policy or convenience, does not exercise the power which it possesses and which has been traditionally exercised in like cases between private suitors does not deprive the suit of its character as a case or controversy cognizable by the Court in an original suit. See *Fidelity National Bank & Trust Co.* v. *Swope*, 274 U. S. 123, 132, 133, 134; *Nashville, C. & St. L. Ry.* v. *Wallace*, *supra*.

DOMICILE.

The Special Master took voluminous testimony in each of the four states, recording every available fact having any bearing on the issue of decedent's domicile. After an exhaustive study of the evidence the Special Master has prepared elaborate subsidiary findings in which he has stated what he considers to be the essential facts of decedent's life which, taken together, were the controlling factors in his arriving at the conclusion that decedent, at the time of his death, was domiciled in the Commonwealth of Massachusetts.

In considering and weighing the evidence the Special Master concluded that there was no local law peculiar to any of the states with respect to the essential fact elements which go to establish domicile, and that the rule in each of the states defining domicile was substantially that of the common law. Texas, since Green in the earlier part of his life lived for a large part of his time in that state and frequently proclaimed it to be his legal residence, places great emphasis on the common law rule that when one has once

acquired a domicile in one place does not lose it by mere residence elsewhere without the intention to make the new place of residence a domicile in the sense of a permanent home. The dominant status, as they were all places in which decedent lived for considerable periods of time during the latter part of his life, and as they were all places with which he thus became more intimately associated, place greater emphasis on "home" as the substantial equivalent of domicile as the term is defined in the American Law Institute's Restatement of Conflict of Laws, § 11, where it is said: "A home is a dwelling place of a person, distinguished from other dwelling places of that person by the intimacy of the relation between the person and the place. . . . In determining whether a dwelling place is a person's home, consideration should be given to:

"1. The physical characteristics;
"2. The time he spends therein;
"3. The things he does therein;
"4. The persons and things therein;
"5. His mental attitude towards the place;
"6. His intention when absent to return to the place;
"7. Elements of other dwelling places of the person concerned."

The Special Master, while not completely adopting either of the tests proposed, nevertheless finds that both support the conclusion. We accept the Special Master's findings of fact and his conclusion that the decedent at the time of his death was domiciled in Texas therein. In the Matter of Lee, 177 Misc. 1, 29 N. Y. S. 2d 1

Dallas and then about 1896 or 1897 leased an apartment in that city. Later he purchased a building there which he remodelled and occupied as a dwelling until 1911, when the building was sold. After that he rented a friend to rent a room for him in Terrell, Texas, admittedly for the purpose of preserving his right to vote in Texas. The room was never occupied by him nor were any of his personals ever there, except a box containing a pair of trousers and a coat. He also owned a two hundred acre experimental farm near Terrell where there were living quarters which he occasionally used. The farm was afterwards sold, and from 1911 on he had no dwelling place in Texas except his private railroad car, which was sold with the road in 1927-1928. Upon his removal to New York in 1911 all of the best furniture in the Dallas residence was packed and shipped to New York for use in his dwelling there. His library of books on scientific subjects was given to the Dallas Public Library. At the time of his death his only real property in Texas consisted of some considerable lots pertaining to the railroad which were appraised at $2,500.

During the period of his residence in Texas, aside from his active interest in the management of the railroad he became interested in scientific and farm experimentation. He also became active in Texas politics, was a Texas delegate to the Republican National Convention at St. Louis, and became Chairman of the Republican State Executive Committee, serving in that capacity for four years, and upon solicitation until 1907. In 1904 the nomination for Governor of Texas on the Republican ticket was offered him, but he declined the nomination upon the insistence of his mother. He was appointed a colonel upon the Texas Governor's Staff and served in that capacity until January, 1911. From 1911 until until 1929 he lived in Texas in winter and summer residences.

Having financially empowered himself so he was attached to the state and to the people. With his resolutions and his substantially all deeds, papers, and legal documents he described himself as of Terrell, Texas and instructed his executors and other managers and his attorneys in New York, Massachusetts and Florida, to execute in all instances legal documents that Terrell was his legal residence. He maintained that residence until 1929. In his will, executed in 1928, in his application for a passport issued in 1927, and

monthly basis. The apartments were furnished by the hotels, decedent's furniture, pictures, and personal belongings, much of which he had brought from Texas, remained at 5 West 90th Street until 1921, when most of them were removed to decedent's place at Round Hills, Massachusetts. In 1928 the remainder was sent to Round Hills and the New York house demolished.

During the last few years of his life his apartment in New York was used only as a temporary stopping place on his trips north and south. At his death the family belongings in the apartment consisted of some of his mother's letters, a portion of his stamp collection, his interest in which had been slight since 1927, some clothing of Mrs. Green's, and a few personal belongings worth less than $1,000. His tangible personal property in New York at the time of his death consisted principally of his collection of jewels, coins, currency and stamps, having an aggregate value of $1,561,223.

yachting trip in 1917 he determined to develop the prop-
a large country estate and build there an imposing resi-
ce that in view and with the consent and approval of his
egan to develop the property in the fall of that year by
g land, constructing breakwaters, wharves, water tanks,
dust, greenhouses and workmen's cottages. From then
development of the property was his principal interest
ation. While the work was going forward decedent spent
s his yacht or at a hotel in the vicinity. In July of 1921
the treaty for occupancy, and from then until shortly be-

pleader. This only serves to emphasize the inappropriateness o utilizing a remedy invented to settle private controversies of limite scope to the resolution of conflicting governmental interests.

Jurisdictional doubts inevitably lose force once leave has bee given to file a bill, a master has been appointed, long hearings hav been held, and a weighty report has been submitted. And s were this the last as well as the first assumption of jurisdictio by this Court of a controversy like the present, even serious doubt about it might well go unexpressed. But if experience is any guide the present decision will give momentum to kindred litigation an reliance upon it beyond the scope of the special facts of thi case. To be sure, the Court's opinion endeavors to circumscrib carefully the bounds of jurisdiction now exercised. But legal doc trines have, in an odd kind of way, the faculty of self-generating extension. Therefore, in pricking out the lines of future develop ment of what is new doctrine, the importance of these issues may make it not inappropriate to indicate difficulties which I have not been able to overcome and potential abuses to which the doctrine is not unlikely to give rise.

I am authorized to say that Mr. Justice BLACK concurs in these views and in the conclusion that the bill should be dismissed.

SUPREME COURT OF THE UNITED STATES.

No. 11, Original—October Term, 1938.

The State of Texas, Complainant,
vs.
The State of Florida, the State of New York, The Commonwealth of Massachusetts, and Hetty Sylvia Ann Howland Green Wilks.

[May 15, 1939.]

DECREE.

This cause came on to be heard on the pleadings, evidence, and the exceptions filed by the parties to the Report of the Special Master, and was argued by counsel.

The Court having dismissed Mabel Harlow Green as a party defendant to the suit on January 17, 1938 (302 U. S. 662), pursuant to the stipulation filed by the parties, it is now here ordered, adjudged and decreed as follows:

1. The Report of the Special Master is confirmed.

2. The domicile of Edward Howland Robinson Green at the time of his death, June 8, 1936, was in fact and in law within the Commonwealth of Massachusetts and not within the State of Texas, the State of Florida, or the State of New York.

3. The cause will be retained upon the docket for such further action as may be necessary and proper and the parties or any of them may at any time hereafter apply for relief as they may be advised.

And it is further ordered that the costs in this case, including the compensation and expenses of the Special Master shall be paid one-fifth each by the State of Texas, State of Florida, State of New York, Commonwealth of Massachusetts, and Hetty Sylvia Ann Howland Green Wilks.

A true copy.

Test:

Clerk, Supreme Court, U. S.